

08 April 2015

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Australian Competition and Consumer Commission  
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Dear Dr Chadwick,

### **AIPA COMMENTS ON THE ACCC DRAFT DECISION TO DENY AUTHORISATION OF THE QANTAS-CHINA EASTERN JOINT COOPERATION AGREEMENT**

The Australian and International Pilots' Association (AIPA) is the largest Association of professional airline pilots in Australia. We represent nearly all Qantas pilots and a significant percentage of pilots flying for the Qantas subsidiaries (including Jetstar Airways Pty Ltd). AIPA represents over 2,100 professional airline transport category flight crew and we are a key member of the International Federation of Airline Pilot Associations (IFALPA) which represents over 100,000 pilots in 100 countries.

AIPA believes that the draft determination of Tuesday 24 March 2015 (the "Determination") denying authorisation of the Qantas-China Eastern Joint Coordination Agreement ("Coordination Agreement") is overly focused on what Qantas and China Eastern might do if the Coordination Agreement was authorised without constraining conditions.

In all of the circumstances, we were surprised that unconditional authorisation was seen as the default option, simply because a capacity obligation seems to have been the only situation considered and subsequently rejected. Given the discussion at paragraphs 266 and 267<sup>1</sup>, it is certainly not clear to us why alternative conditions for various aviation market definitions could not be developed that would appropriately constrain the parties from behaving anti-competitively.

AIPA also offers the view that the reasoning behind the Determination undervalues the future public benefit of a stronger and more sustainable Qantas.

We believe that the ACCC has treated the discernible private benefit to Qantas from the Coordination Agreement as virtually quarantined from the public benefit. AIPA has long expressed the view that cheap ticket prices are not necessarily the best or only metric of public benefit and that insufficient regard is shown for the public benefit of having one or more Australian international airlines. We suggest that the future public benefit arises not only in terms of the benefits flowing to the travelling public from a Qantas better able to compete more effectively in more markets, but also in terms of the national interest benefit that accrues from having a national carrier driven by

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<sup>1</sup> Qantas Airways Limited & China Eastern Airlines Corporation Limited - Draft Determination - 24.03.15 – PR A91470 & A 91471, page 44.

Australian interests that is both a large scale employer and consumer of goods and services.

We are well aware that the international airline sector is generally faced with two financial extremes: extremely high capital requirements and very low margins. As the submissions of Virgin Australia, Air New Zealand and the Department of Infrastructure and Regional Development all make quite clear, alliances and coordination agreements are an increasing feature of the international airline sector. AIPA notes that none of those submissions raises any substantial concerns with the proposed Coordination Agreement, which in our view reinforces the sector wide search for arrangements that generate efficiencies where they may not be otherwise available.

Given that the Draft Determination recognises these efficiencies, AIPA urges the ACCC in making its final Determination not to overstate the likelihood of monopolistic price-gouging under the Coordination Agreement in comparison with the existing price-matching capability of the current duopoly. There is no guarantee that the behaviour deemed to be highly likely in the ACCC's assessment may actually arise.

AIPA contends that the ACCC's decision process in this case is somewhat unbalanced by considering a single route as distinct from the overall Australia-China market. Notwithstanding, we believe that isolating a single city pair should make it easier to develop conditions that provide both a disincentive to behave monopolistically as well as a basis to unwind the agreement in the face of evidence of abuse of market power. If the constraining metrics are well chosen, then the probability of early detection of inappropriate behaviour must be particularly high. and the sheer cost to the applicants of unwinding the Coordination Agreement must be a very powerful disincentive to engage in anti-competitive behaviour.

In summary, AIPA believes that the draft Determination leans far too heavily on what is "possible" rather than what is actually "likely" in the context of authorisation by the Australian and Chinese governments. We also believe that appropriate conditions can be developed that would allow the proposed conduct to be authorised.

AIPA therefore strongly recommends that the ACCC refocus the decision on providing Qantas and China Eastern the opportunity to demonstrate that the public detriment envisaged by the ACCC does not arise and that similar Coordination Agreements can be appropriately constrained by approval conditions.

Yours sincerely



Nathan Safe  
President  
Australian & International Pilots Association