



Determination

Application for revocation of A91470 and A91474 and the substitution of authorisation AA1000526

lodged by

Qantas Airways Limited and China Eastern Airlines Corporation Limited

in respect of

a Joint Coordination Agreement

Authorisation number: AA1000526

29 January 2021

Commissioners:

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Rickard

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Summary

The ACCC has decided to grant authorisation until 31 March 2023 to enable Qantas Airways Limited & China Eastern Airlines Corporation Limited (the Applicants) to continue to operate an aviation alliance by giving effect to the conduct described in an extended Joint Coordination Agreement (JCA).

The Applicants entered into the original JCA in 2015 in order to coordinate their operations relating to flights between mainland China and Australia. The ACCC granted conditional authorisation for the Applicants to give effect to the original JCA on 21 August 2015, permitting the alliance until 31 October 2020.

The applicants have varied the JCA to extend the period of its operation to March 2022 and are seeking an 18 month re-authorisation. The Applicants submit that they have sought a short extension to the authorisation given the crisis and market uncertainty created by the novel coronavirus (COVID-19) pandemic. The Applicants intend to then seek a further extension of the authorisation beyond 2022.

In the context of the significant disruption to international travel resulting from the COVID-19 pandemic, the ACCC considers that the extended JCA is likely to result in a public benefit by assisting the Applicants to reinstate flights, and potentially grow the capacity they operate between Australia and China as travel restrictions ease, more quickly and in a more sustainable way than would otherwise be the case.

The ACCC also considers that as travel between Australia and China resumes, the extended JCA is likely to result in public benefits by assisting the Applicants to provide an expanded range of destinations on a single ticket, improve connectivity, provide shorter journey times, and provide a wider range of loyalty program benefits.

In 2015, the ACCC concluded that the Applicants coordinating their operations on routes between Australia and China was likely to significantly reduce competition on the one route on which they overlapped with direct flights, the Sydney – Shanghai route. At the time this route accounted for around 23% of all travel on direct flights between Australia and China.

Qantas and China Eastern were each other's closest competitors on the Sydney – Shanghai route, each was likely to be the other's most significant competitive constraint on the route, and the ACCC considered that this competition was likely to be lost under the alliance. The ACCC considered that this would provide Qantas and China Eastern with the ability and incentive to unilaterally reduce capacity, or limit growth in capacity, to increase prices on this route.

To address this concern, the ACCC imposed conditions of authorisation requiring Qantas and China Eastern to maintain at least an aggregate base level of capacity across routes between Shanghai and Australia and on the Sydney – Shanghai route. Qantas and China Eastern were also required to grow capacity in aggregate across routes between Shanghai and Australia over the term of the authorisation by a compound annual growth rate of 4%.

The conditions of authorisation also required Qantas and China Eastern to provide specific data to the ACCC at the end of each scheduling season, including data about capacity added, passengers flown and average fares on each route between Australia and China on which they operated services.

The ACCC remains of the view that in times of more normal levels of demand for services between Sydney and Shanghai, as was the case prior to the COVID-19

pandemic, and likely will be again in the medium to long term, the lessening in competition between the Applicants on the Sydney – Shanghai route as a result of the Proposed Conduct is likely to result in a significant public detriment.

However, the ACCC notes that current demand for flights between Australia and China is low and there is uncertainty about the extent and timing of a recovery in demand that is likely to occur. Further, it is not apparent that if Qantas and China Eastern were operating independently of each other, there would be sufficient recovery in demand to fuel a strong return to the route for both airlines in the short term. As noted, the ACCC considers that the extended JCA will assist Qantas and China Eastern in reinstating services as demand picks up.

For these reasons, the ACCC considers that the extent of any anti-competitive detriment that is likely to result from the Applicants coordinating their operations on the Sydney – Shanghai route, or between Australia and China more broadly, is likely to be limited in the short term.

The Applicants have sought re-authorisation until 31 March 2022. It now appears that the period of disruption to the aviation industry as a result of the COVID-19 pandemic is likely to be longer than was anticipated at the time the application was lodged. It is likely to take longer than originally anticipated for opportunities for travel between Australia and China to return to their pre-pandemic state. Therefore, the ACCC has decided to grant authorisation until 31 March 2023.

The ACCC granted interim authorisation for the Applicants to give effect to the extended JCA on 7 September 2020. That interim authorisation will remain in place until it is revoked or the date this determination comes into effect.

1. The application for authorisation

- 1.1. On 31 July 2020, Qantas Airways Limited & China Eastern Airlines Corporation Limited (the **Applicants**) lodged an application to revoke authorisations A91470 & A91471 and substitute authorisation AA1000526 for the ones revoked (referred to as **re-authorisation**) with the Australian Competition and Consumer Commission (the **ACCC**). The Applicants are seeking re-authorisation for coordination on operations between Australia and mainland China for a further for 18 months (i.e. until 31 March 2022). This application for re-authorisation AA1000526 was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.2. The ACCC can grant authorisation which provides businesses with legal protection for arrangements that may otherwise risk breaching the law but are not harmful to competition and/or are likely to result in overall public benefits.

The Applicants

Qantas Airways Limited

- 1.3. Qantas was incorporated in Australia in 1920 and is Australia's largest domestic and international airline.
- 1.4. Prior to the COVID-19 pandemic, the Qantas Group operated 4,500 domestic and 730 international flights each week using two airlines: Qantas – a full service airline offering domestic and international services; and Jetstar Airways – a low cost airline offering domestic and international services, predominantly focussed on servicing price sensitive consumers.

- 1.5. In addition to its alliance with China Eastern, the Qantas Group is currently a party to the following airline alliances:
- an alliance with Emirates, which was re-authorised by the ACCC for five years on 23 March 2018, and
 - an alliance with American Airlines pursuant to a Joint Business Agreement which was re-authorised by the ACCC for five years on 25 February 2016. On 19 October 2020 Qantas and American Airlines lodged an application for re-authorisation of this alliance for a further five years. This application is currently being considered by the ACCC.
- 1.6. Qantas and Japan Airlines Co Ltd have also applied for authorisation to give effect to a Joint Business Agreement which would allow them to work together in their operations across a range of routes between Australia/New Zealand and Japan. The ACCC is currently considering this application.
- 1.7. Qantas also has an extensive network of codeshare partners.

China Eastern Airlines Corporation Limited

- 1.8. China Eastern is a full-service airline and one of China's three largest airlines. Its main hubs are at Shanghai's Pudong International and Hongqiao International airports, with secondary hubs at Kunming Changshui International Airport and Xi'an Xianyang International Airport.
- 1.9. China Eastern was established in 1988 following the Chinese Government's decision to create separate commercial airlines out of the Civil Aviation Administration of China (CAAC). China Eastern Air Holding Company, founded in 1996, is a state-owned enterprise incorporated in China and the parent company of China Eastern, with a shareholding of 49.8%. China Eastern was listed on the Hong Kong, New York and Shanghai stock exchanges in 1997. China Eastern's indirectly owned subsidiary, China Eastern Air Logistics Co Ltd, provides freight services.
- 1.10. China Eastern is one of the largest airlines in the world by passengers flown. Prior to the COVID-19 pandemic, China Eastern operated a fleet of 704 passenger aircraft, 14 freight and 15 business aircraft. China Eastern has an established network throughout China and extending to Japan, Korea, South East Asia, Europe, North America and Oceania. In 2011, China Eastern became a member of the SkyTeam Alliance.
- 1.11. China Eastern also owns Shanghai Airlines, which operates 105 aircraft and is also a member of the SkyTeam alliance.

The Proposed Conduct

- 1.12. The Applicants entered into a Joint Coordination Agreement (JCA) on 17 November 2014 for an initial term of five years. The Applicants have extended the JCA until March 2022 and, pursuant to the extended JCA, are seeking re-authorisation for themselves and their related bodies corporate to continue their coordination under the terms of the JCA. The JCA provides for coordination of their operations between Australia and China. The proposed coordination between the Applicants includes:
- schedules, frequencies and connection times
 - enabling the potential expansion of destinations served by the Applicants' operations

- expanding connecting services at primary gateways leading to more one-stop online points of service
- pricing, including developing new fare products and promotions
- reciprocal inventory access to facilitate more bookings on both Applicants' services, including group bookings
- expanding reciprocal airport lounge access, improving facilities within lounges and streamlining check-in facilities for passengers
- increasing opportunities and benefits for members of both Applicant's frequent flyer programs, and
- easing the planning of itineraries through the provision of better information to agents

(the **Proposed Conduct**).

- 1.13. Existing authorisations for cooperation between the Applicants pursuant to the JCA were due to expire on 31 October 2020. The Applicants submit that they have sought a short extension to the authorisations given the crisis and market uncertainty created by the COVID-19 pandemic. The Applicants submit that the nature of their proposed cooperation is not materially different from that previously authorised.
- 1.14. Specifically, the Applicants submit that seeking a short term extension of the current alliance gives the Applicants the best and fastest ability to restore confidence and sustainable services to consumers and businesses of both Australia and China in the short to medium term after the COVID-19 pandemic eases, whilst also providing the certainty to plan and implement other customer benefits in the long term. An extension of the current alliance until March 2022 would provide the Applicants with the ability to work together for a further 18 month period past the expiry of the previous authorisation. This 18 month period encompasses three scheduling seasons, over which time it is hoped that supply and demand dynamics on international passenger and cargo markets will start to 'normalise' and the Applicants can better plan for a longer term cooperation beyond that, subject to ongoing approval from relevant authorities.
- 1.15. The Applicants submit that their intention will be to then seek a further extension of the Proposed Conduct beyond 2022.

Interim authorisation

- 1.16. The Applicant also requested interim authorisation to facilitate the immediate planning and coordination of services to be operated after 31 October 2020, when the current authorisations were due to expire.
- 1.17. On 7 September 2020, the ACCC granted interim authorisation under subsection 91(2) of the Act.¹ Interim authorisation will remain in place until the date this determination comes into effect or until the ACCC decides to revoke interim authorisation.
- 1.18. The ACCC's interim authorisation decision is available on the [Public Register](#).

¹ See ACCC decision of 7 September 2020 available at <https://www.accc.gov.au/system/files/public-registers/documents/Interim%20Authorisation%20Decision%20-%202007.09.20%20-%20PR%20-%20AA1000526%20QCE.pdf>.

2. Background

Alliance between Qantas and CEA previously authorised in 2015

- 2.1. On 18 November 2014, the Applicants sought authorisation for five years to coordinate their operations between Australia and China pursuant to the original JCA. On 21 August 2015 the ACCC granted conditional authorisations A91470 & A91471 (**the 2015 Authorisations**) for a period of five years.
- 2.2. In granting the 2015 Authorisations, the ACCC considered that the Proposed Conduct was likely to result in public benefits by:
 - providing passengers on Qantas flights between Sydney and Shanghai with improved connectivity and convenience when transferring to a China Eastern flight for onward travel and vice versa
 - enabling better scheduling of complementary services by the Applicants, thereby facilitating greater connectivity between their services
 - facilitating, to some extent, the addition of new frequencies and destinations by the Applicants, or the addition of these frequencies and destinations sooner than would otherwise be the case
 - potentially enhancing the attractiveness of the Applicants' loyalty programs, and
 - providing cost savings resulting from terminal co-location in Shanghai which would allow for more efficient management of transiting passengers and streamlining of processes for handling freight being transported to Shanghai by Qantas and onwards by China Eastern.
- 2.3. However, the ACCC was concerned that as Qantas and China Eastern were each other's closest competitors on the one route on which they overlapped with direct flights, Sydney – Shanghai, the competitive constraint they imposed on each other was likely to be lost under the proposed alliance. The ACCC was concerned that this would provide Qantas and China Eastern with the ability and incentive to unilaterally reduce capacity, or limit growth in capacity on this route, thereby making seats more scarce, in order to increase prices on the route.
- 2.4. In order to mitigate concerns about the public detriment flowing from the lessening of competition on the Sydney – Shanghai route, the 2015 Authorisations were granted subject to conditions requiring the Applicants to:
 - maintain at least an aggregate base level of capacity across routes between Shanghai and Australia and also maintain at least their existing level of capacity on the Sydney – Shanghai route
 - grow capacity in aggregate across routes between Shanghai and Australia over the term of the authorisation by a compound annual growth rate (**CAGR**) of 4%, and
 - provide specific data to the ACCC at the end of each scheduling season, including data about capacity added, passengers flown and average fares on each route between Australia and China on which they operate services.
- 2.5. Prior to the Northern Winter 2019 scheduling season, the Applicants complied with each of these conditions.

- 2.6. The Applicants applied to vary these conditions as they applied to the Northern Winter 2019 and Northern Summer 2020 scheduling seasons due to exceptional circumstances related to the outbreak of COVID-19 and subsequent travel restrictions to China.
- 2.7. The Applicants requested that the requirements to operate minimum levels of seat capacity be reduced for the Northern Winter 2019 scheduling season and waived for the Northern Summer 2020 scheduling season. The ACCC decided to vary and waive the conditions as requested.
- 2.8. The terms of the extended JCA for which authorisation is sought have not changed materially compared to the Original JCA, except the JCA has an extended term (until 31 March 2022) and clarifies that China Eastern's subsidiary, Shanghai Airlines, may operate services under the agreement.

The Applicants' operations between Australia and China

- 2.9. The Applicants submit that in the year ending October 2015 there were five airlines operating direct (non-stop) services between Australia and China (Qantas/Jetstar, China Eastern, Air China, China Southern and Sichuan Airlines). By the year ending December 2019, the number of airlines operating services between Australia and China had grown to 10 (all of the aforementioned airlines and Beijing Capital Airlines, Xiamen Airlines, Hainan Airlines, Donghai Airlines and Tianjin Airlines). The Applicants submit that there has been a 98% increase in capacity (seats) flown between Australia and China between October 2015 and December 2019, and an 8% increase in capacity between Sydney and Shanghai.
- 2.10. Qantas operates passenger services on one route, Sydney – Shanghai. Prior to the COVID-19 pandemic, Qantas offered a single flight on a daily basis each way. Qantas also operates a dedicated freighter service between Sydney and Chongqing two times a week and between Sydney and Shanghai once a week (these services have continued through the COVID-19 pandemic). Jetstar ceased operating services between Australia and China in December 2019.
- 2.11. In January 2017, Qantas commenced a Sydney – Beijing service, but announced in November 2019 that it intended to exit the route in March 2020 due to poor financial performance. As a result of the COVID-19 pandemic, Qantas brought forward its exit from the route and ceased services on 9 February 2020.
- 2.12. Prior to the COVID-19 pandemic, China Eastern operated:
 - twice daily services between Sydney and Shanghai
 - four weekly services between Brisbane and Shanghai
 - twice daily services between Melbourne and Shanghai
 - three weekly seasonal services between Perth and Shanghai
 - three weekly services between Sydney and Hangzhou
 - three weekly service between Sydney and Nanjing
 - three weekly services between Sydney and Wuhan, and
 - two weekly services between Sydney and Kunming.

2.13. China Eastern carries freight in the bellyspace of its passenger services but does not operate any dedicated freighters to or from Australia.

The impact of COVID-19

2.14. The Applicants submit the following in respect of the impact of the COVID-19 pandemic on travel between Australia and China.

2.15. The future trajectory of tourism between Australia and China was discussed in Tourism Research Australia's *Tourism Forecasts 2019* (published in September 2019), which forecast that "Chinese visitation will continue to rise but transition to a more sustainable trajectory as the country's economic growth slows and the impacts of trade tensions with the United States (US) continue to play out."²

2.16. However, the global spread of COVID-19 and restrictions imposed in response to it have had a significant impact on air services between Australia and China. On 1 February 2020, the Australian government issued a statement that the National Security Committee of Cabinet had decided to introduce strict new travel restrictions and travel advice closing entry to Australia for Chinese nationals (excluding permanent residents) that had left from or transitioned through mainland China in the preceding 14 days. The travel advice issued to Australians was raised to level four – "Do not travel".³ On 24 March 2020 the Australian Prime Minister imposed a ban on all Australians travelling overseas.⁴ Health Department Secretary, Professor Brendan Murphy, recently indicated that substantial Australian border restrictions will likely remain in place for most of 2021, even if a lot of the population have been vaccinated.⁵

2.17. The travel restrictions imposed from 1 February 2020 posed significant logistical challenges for rostering crew to operate mainland China services and led Qantas to suspend all services between Sydney and Shanghai and between Sydney and Beijing. On 9 February 2020, Qantas suspended all flights between Australia and mainland China; at the time these flights were not scheduled to recommence until October 2020.

2.18. Similarly, the Ministry of Foreign Affairs of the People's Republic of China made announcements in late March 2020 regarding the temporary suspension of entry regarding foreign nationals and the Civil Aviation Administration of China published a notice regarding the further reduction of international passenger flights which applied from 29 March 2020. As the situation has evolved, China Eastern has also announced the cancellation of certain flights between Australia and China as a result of the COVID-19 outbreak. This included the cancellation of Shanghai – Melbourne, Shanghai – Brisbane, Shanghai – Perth, Sydney – Hangzhou – Beijing and Sydney – Wuhan-Xian flights. China Eastern has continued to operate its Shanghai – Sydney service once a week.

² Tourism Research Australia, *Tourism Forecasts 2019*, September 2019, <https://www.destinationnsw.com.au/wp-content/uploads/2019/09/tourism-research-australia-tourism-forecast-report-2019.pdf>, page 4.

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

⁴ Media statement from the Prime minister, 24 March 2020, <https://www.pm.gov.au/media/update-coronavirus-measures-24-March-2020>.

⁵ Executive Traveller, *Widespread international travel unlikely for Australians in 2021*, 18 January 2021 <https://www.executivetraveller.com/news/widespread-international-travel-unlikely-for-australians-in-2021>

3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including major airlines, airports, industry associations, government departments and organisations, unions and supporting service providers (e.g. catering, fuel suppliers, ground handling).⁶
- 3.3. Prior to the draft determination the ACCC received a submission from Perth Airport, which supports re-authorisation, without conditions, in recognition of the challenges faced by airlines as a result of the COVID-19 pandemic. Perth Airport submits that re-authorisation should be granted for 12 months rather than the 18 months requested because the reinstatement of the conditions requiring the Applicants to grow capacity on routes between Shanghai and Australia at that time would be timely and appropriate.
- 3.4. The ACCC also received one submission that was excluded from the public register at the request of the party making the submission. The confidential submission supported re-authorisation, citing benefits of the alliance for tourism and suggesting re-authorisation could support further routes becoming available in the future.
- 3.5. On 3 December 2020, the ACCC issued a draft determination proposing to grant authorisation for 18 months. Following the draft determination, no submissions were received from interested parties and a pre-decision conference was not requested.
- 3.6. Public submissions by the Applicants and interested parties are on the [Public Register](#) for this matter.

4. ACCC assessment

- 4.1. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. The Applicants have sought authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 of the Act. Consistent with subsection 90(7) and 90(8) of the Act,⁷ the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (**authorisation test**).

Relevant areas of Competition

- 4.3. To assess the likely effect of the Proposed Conduct, the ACCC will identify the relevant areas of competition likely to be impacted.
- 4.4. No submissions from the Applicant or interested parties directly comment on the relevant areas of competition.

⁶ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

⁷ See subsection 91C(7).

- 4.5. In considering the Applicants' previous application for authorisation, the ACCC identified the following relevant areas of competition:
- international air passenger transport services between Australia and China, and
 - international air cargo transport services (freight and mail) between Australia and China.
- 4.6. The ACCC considers that these remain relevant areas of competition for this assessment.
- 4.7. Within these areas of competition, the ACCC considers that it is also appropriate to examine the likely effects of the alliance on competition and rivalry on particular routes where necessary. In this instance, specifically the Sydney – Shanghai route being the one route on which the Applicants overlap with direct flights.

Future with and without the Proposed Conduct

- 4.8. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.
- 4.9. The Applicants submit that authorisation of the Proposed Conduct will provide them with the ability to continue to offer sustainable capacity on routes between Australia and China, including an expanded range of codeshare destinations. And, if the Proposed Conduct is not authorised the Applicants would revert to a limited codeshare relationship.
- 4.10. The Applicants submit that, absent authorisation, the codeshare agreement between Qantas and China Eastern would be operated as an 'arm's length' relationship with no incentive to coordinate operations to facilitate customer choice and preserve Qantas' presence on Australia-China routes.
- 4.11. The ACCC considers that absent the Proposed Conduct (if the conduct described in the JCA cannot be given effect to), the Applicants would be likely adopt a more limited codeshare agreement, as was the case prior to the JCA being entered into in 2015. The ACCC notes that the JCA covers a significantly larger number of routes than were covered by the Applicants' previous codeshare agreement.

Impact of COVID-19

- 4.12. The ACCC has previously concluded that coordination between Qantas and China Eastern is likely to result in a range of public benefits including increased connectivity and convenience for passengers and expansion of frequencies and destinations flown. However, the ACCC has been concerned about a reduction in competition between Qantas and China Eastern, particularly on the Sydney – Shanghai route where they are each other's closest competitors. In 2015, the ACCC imposed conditions of authorisation requiring the Applicants to maintain and grow capacity on routes between Australia and Shanghai to address these concerns.
- 4.13. The ACCC recognises that due to travel restrictions, the market conditions in which the alliance will operate, at least in the short term, will be substantially different. In particular, demand for services is likely to be significantly lower than historical levels over the next 12 to 24 months. Further, the timing, pace and extent of the recovery in demand when travel restrictions do ease is uncertain and likely to be non-linear. This

impacts the assessment of both the public benefits and public detriments likely to result from the Proposed Conduct.

Public benefits

- 4.14. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that the term should be given its widest possible meaning, and includes:

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*⁸

- 4.15. The ACCC's assessment of the likely public benefits from the Proposed Conduct follows.

Post COVID-19 capacity reinstatement, sustainability and growth

- 4.16. The Applicants submit that the JCA is needed to ensure the capacity growth previously achieved by the alliance can be restored quickly and to the maximum extent possible as demand for travel recovers post the COVID-19 pandemic. The Applicants submit that the JCA will allow Qantas and China Eastern to maximise cross selling across their routes and allow more effective joint marketing, further delivering one of the key public benefits delivered by the alliance, additional capacity on routes between Australia and China post the COVID-19 pandemic.
- 4.17. The Applicants submit that their alliance has increased the average number of flights between Australia and China. Between October 2015 and December 2019 capacity operated by the alliance increased from 4.2 flights per day between three Australian cities and two Chinese cities, to 7.3 flights per day between four Australian cities and six cities in China.
- 4.18. The Applicants submit that Qantas requires the continued support of China Eastern while it recovers from the impact of the COVID-19 pandemic. Without the alliance, the Applicants submit that Qantas' last remaining operation between Australia and China – its Sydney – Shanghai service – will be jeopardised and its participation in the China market would be marginal in the medium-long term.
- 4.19. The Applicants also submit that authorisation will provide China Eastern with certainty and support to ensure its services to and from Australia are successfully reinstated post-pandemic. Without the alliance, the Applicants consider that there will be a higher likelihood of China Eastern not being able to reinstate the level of capacity it was operating prior to the pandemic.
- 4.20. The Applicants also submit that extending the JCA would create potential to increase the capacity offered between Australia and China, including new routes, if demand sufficiently recovers after the COVID-19 pandemic. China Eastern has significantly increased its capacity between China and Australia since 2015. While China Eastern has no plans in the short-medium term to introduce new capacity between Australia and China due to COVID-19, the Applicants submit that it is possible for China Eastern to commence new operations between China and Australia over the longer term. The Applicant's submit that increasing frequencies between Australia and China in the long

⁸ Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

term would require Qantas' ongoing commercial support, particularly for sales and distribution in Australia.

- 4.21. The ACCC considers that decisions about capacity operated, including adding additional capacity, are primarily driven by market conditions and passenger demand. However, the ACCC accepts that in the initial post COVID-19 recovery phase, once international travel resumes, there will be significant uncertainty about market conditions and passenger demand. This may make airlines more reluctant to commit to reinstating and growing capacity than would otherwise be the case.
- 4.22. The ACCC considers that under the JCA, the Applicants are likely to reinstate capacity, and potentially grow capacity, more quickly and in a more sustainable way than would otherwise be the case by allowing the Applicants to combine load volumes and undertake joint marketing initiatives which could potentially stimulate additional passenger traffic.
- 4.23. The payment terms of the JCA also lessens the commercial risk for the Applicants in undertaking capacity expansion relative to them each individually undertaking such expansion.
- 4.24. Further, the extensive behind and beyond routes covered by the JCA will also promote greater traffic on point-to-point routes between Australia and China, and thereby contribute to underpinning the viability of capacity on those routes.
- 4.25. The ACCC considers this faster and more sustainable reinstatement and potential growth in capacity between Australia and China represents a benefit to consumers seeking to travel between Australia and China as travel restrictions ease.
- 4.26. In this respect, in its determination authorising the original JCA the ACCC expressed the view that it expected that successful implementation of the JCA should result in significant additional growth in capacity by the Applicants.
- 4.27. The ACCC notes that between 2015 and 2019, the Applicants grew capacity on routes between Australia and China by approximately 80%. This included the commencement of new routes, namely:
- Sydney – Hangzhou – Beijing and Sydney – Kunming services operated by China Eastern, which commenced in November 2016
 - Brisbane – Shanghai services operated by China Eastern, which commenced in December 2016
 - Sydney – Wuhan – Xian services operated by China Eastern, which commenced in January 2017

as well as increased services on the Sydney – Shanghai route (China Eastern and Qantas, from 17 weekly services to 21 weekly services) and Melbourne – Shanghai route (China Eastern, from 10 weekly services to 14 weekly services).

- 4.28. The ACCC considers that this supports the view that post COVID-19 growth in capacity between Australia and China is a likely result of the Proposed Conduct, which represents a benefit for travellers.

Other public benefits considered by the ACCC

4.29. The ACCC considers that assisting the applicants to reinstate, sustain, and grow capacity between Australia and China post the COVID-19 pandemic is the primary public benefit likely to result from the Proposed Conduct.

4.30. The Applicants argue that the Proposed Conduct is also likely to result in a range of other public benefits. The ACCC considers that the extent to which these public benefits are realised is primarily dependent on the recovery in demand for services between Australia and China. The greater the demand for services, the greater the public benefit likely to be realised. These public benefits are considered below.

Improved products and services – expanded range of destinations on a single ticket, increased connectivity, and shorter journey times

4.31. Both Qantas and China Eastern have extensive domestic networks in their home countries that are more easily accessed by passengers under the JCA. The number of destinations covered by the JCA, compared to the Applicants' more limited codeshare arrangements prior to their alliance has increased from 12 to 24 in China and 8 to 26 in Australia. The number of connecting itineraries from Australia to China (via Shanghai) increased from 767 per week to 965 between March 2016 and December 2019. Over the same period the number of connecting itineraries from China destinations to Australia (via Sydney/Melbourne/Brisbane) increased from 282 to 790.

4.32. The ACCC considers that the JCA is likely to provide passengers with an expanded range of online connections (passenger itineraries of two or more flight segments where connections are made between flights of the same airline, or its codeshare partners) for itineraries where passengers would be otherwise required to use interline connection options (connection between two different codes).

4.33. This replacement of interline connection options with online connection options may benefit customers in multiple forms, including:

- eliminating the risk of forfeiting non-refundable fares if the first flight in a journey is delayed
- increased convenience in not having to collect and re-check baggage mid journey (where applicable), and
- time savings associated with 'through check' (i.e. passengers do not need to allow time for a second check-in, where applicable) and better transit times due to coordination of the timing of connecting flights.

4.34. The ACCC considers that the number of routes with online rather than interline connections is likely to be greater with the Proposed Conduct than without because the structure of the payments between the Applicants better aligns their incentives, allows them to sell the full range of inventory of each other's flights and because of the broader range of cooperation and coordination the Proposed Conduct provides for in relation to areas such as pricing, capacity, sales and marketing.

Loyalty program benefits

4.35. Qantas and China Eastern's more limited codeshare arrangement in place prior to entering into the JCA allowed each Applicant's frequent flyer program members to earn and redeem frequent flyer points on the other Applicant's services. However, the range of opportunities for members of the Applicant's programs to earn and redeem

points on their respective networks was significantly expanded under the JCA. Other initiatives implemented include priority check-in, priority boarding and lounge access.

- 4.36. The Applicants note significant increases in earn and redemption activity since the ability to earn and redeem Qantas Points (or Status Credits where applicable) on China Eastern operated services became available.
- 4.37. The ACCC considers that the attractiveness of the Applicants' loyalty programs are likely to be enhanced under the alliance, primarily by increased access to existing China Eastern frequencies and destinations. In this respect, the ACCC notes the expansion in the number of routes covered by the JCA compared to Applicants' previous codeshare agreement. Given the large number of frequent flyer members and the range of benefits that might accrue to them, this is likely to result in a public benefit.

Tourism recovery and trade benefits

- 4.38. The Applicants submit that increased capacity, expansion in routes covered by the JCA compared to their previous codeshare agreement and improved connectivity delivered by the alliance since 2015 has contributed to tourism growth throughout Australia. The Applicants state that Qantas and China Eastern have engaged in joint marketing campaigns to promote Australia as a destination for Chinese tourists, including through holding major promotional events and monthly joint calls for travel agents in China to promote the destinations to which passengers can now seamlessly fly and the fact that the alliance can offer customers more choice and better experiences to meet their varying demands. Furthermore, when market conditions improve, the Applicants will undertake promotions to attract Chinese tourists to Australia and Australian tourists to China.
- 4.39. The ACCC considers that airline alliances can stimulate tourism by (i) making Australia more accessible or convenient as a tourist destination by enhancing the alliance's product and service offering, and (ii) allowing the parties to exploit synergies through joint rather than separate tourism promotion activity.
- 4.40. However, there are a wide range of factors which influence tourism demand and expenditure, including general purchasing power in source countries, the relative cost of other destinations, the total cost of visiting Australia and the perceived quality of Australia as a destination.
- 4.41. In this case, the ACCC consider that by increasing the connectivity and convenience of the Applicants' services and expanding the frequencies and destinations offered by them the Proposed Conduct does have the potential to promote greater levels of inbound tourism to Australia as travel restrictions ease. In particular, the larger number of routes covered by the JCA compared to the Applicants' pre-alliance codeshare arrangement provides greater connectivity for China Eastern passengers to a wider range of Qantas domestic services.
- 4.42. However, having regard to the range of other factors that are likely to be more significant determinants of inbound tourism numbers, and the alternative options available to many potential Chinese tourists wishing to visit Australia (in the form of services provided by other airlines) the ACCC does not consider that the impact of the Proposed Conduct on Australian tourism is likely to be significant. In this respect, the ACCC expects that as travel restrictions ease the range of travel option for Chinese tourists wishing to visit Australia provided by alternative airlines are also likely to grow.

4.43. With respect to trade, the key drivers of the volume and value of (non-tourism) trade between Australia and China are largely outside the influence of airlines. They include, for example, purchasing power in source countries, the relative prices of goods and services, consumer tastes and preference, 'ease of doing business', and stability of government. Therefore, the ACCC considers that any net positive impact on trade as a result of the Proposed Conduct is likely to be small.

ACCC conclusion on public benefit

4.44. The ACCC considers that the Proposed Conduct is likely to result in public benefits from:

- faster and more sustainable reinstatement and potential growth in capacity between Australia and China as travel restrictions ease
- improved products and services. Specifically, an expanded range of destinations on a single ticket, improved connectivity and shorter journey times, and
- loyalty program benefits.

4.45. The ACCC considers that the Proposed Conduct is also likely to result in a small public benefit in the form of stimulation of tourism to Australia.

Public detriments

4.46. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.⁹

4.47. As noted, the Applicants' own metal services only overlap on one route, Sydney – Shanghai. Based on the information available, the ACCC considers it unlikely that Qantas would commence operating services on any route between Australia and China, other than Sydney – Shanghai, over the next two years.

4.48. Accordingly, in assessing the likely public detriments of the Proposed Conduct the ACCC has focused primarily on this route and the potential competitive harm resulting from Qantas and China Eastern coordinating their price and service decisions on this route (unilateral effects). The ACCC considers that the competitive constraint Qantas and China Eastern would otherwise impose on each other as the major carriers on this route is likely to be lost with the Proposed Conduct in place.

4.49. The analysis below also briefly considers whether the Proposed Conduct may increase the risk of coordinated conduct on the Sydney – Shanghai route, the impact on competition to supply passenger services on other routes between Australia and China and the impact on competition to supply air cargo transport services between Australia and China.

4.50. The ACCC does not consider that the Proposed Conduct will have a significant impact on competition in any area of competition other than air passenger services on the Sydney – Shanghai route.

4.51. The ACCC's assessment of the likely public detriments from the Proposed Conduct follows.

⁹ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

The Sydney – Shanghai route – unilateral effects

- 4.52. In its 2015 assessment of the Proposed Conduct, the ACCC concluded that the Proposed Conduct was likely to significantly reduce competition on the Sydney – Shanghai route. Sydney – Shanghai was the main route between Australia and China and, at that time, accounted for around 23% of all travel between the two countries (direct flights). The Applicants were the two major carriers on the route with a combined share of capacity (seats flown on direct flights) of 84.5% and were the only airlines operating daily direct flights. The only other airline offering direct flights on the route was Air China, three days a week.
- 4.53. The ACCC considered that Qantas and China Eastern were each other's closest competitors on the Sydney – Shanghai route, that each was likely to be the other's most significant competitive constraint, and that this competition was likely to be lost under the proposed alliance. The ACCC considered that the JCA would provide Qantas and China Eastern with the ability and incentive to unilaterally reduce capacity, or limit growth in capacity, thereby making seats more scarce, to increase prices on this route.
- 4.54. In order to address these concerns, the ACCC imposed the conditions of authorisation noted at paragraph 2.4. Broadly, these conditions required the Applicants to grow capacity on routes between Australia and Shanghai by a CAGR of 4% and maintain capacity on the Sydney – Shanghai route. These conditions were intended to ensure that the Proposed Conduct did not provide an opportunity for Qantas and China Eastern to increase airfares by reducing the frequency of services provided below that which could be expected if the alliance was not in place and they continued to compete strongly with each other for passengers.
- 4.55. In the first four years of the alliance, the independently audited information provided to the ACCC by the Applicants, as also required by the conditions of authorisation, indicates that they maintained well above the aggregate base level of capacity required by the conditions across routes between Shanghai and Australia and on the Sydney – Shanghai route. Between 2016¹⁰ and December 2019 the Applicants grew capacity on routes between Shanghai and Australia by 40% (a CAGR of approximately 9%). On the Sydney – Shanghai route they grew capacity by around 18% over the same period.
- 4.56. The ACCC notes that Air China is no longer providing direct flights on the Sydney – Shanghai route. Further, in 2015 the ACCC concluded that timely entry or expansion on the Sydney – Shanghai route by another airline on a scale sufficient to provide a competitive constraint on Qantas and China Eastern was unlikely, primarily because Virgin Australia was unlikely to do so and most large Chinese airlines operated out of hubs, none of which were based in Shanghai. The ACCC considers that timely entry or expansion is now less likely again in the short term given the ongoing impacts of the COVID-19 pandemic on international travel.
- 4.57. The Applicants submit that passengers on the Sydney – Shanghai route are price-sensitive and will switch airlines if sufficient incentives are offered, and indirect operators on the route (such as China Southern and Cathay Pacific, who offer one stop services transitioning through other airports) do capture traffic. The Applicants also submit that on the Sydney – Shanghai route the Applicants are also constrained by services of other airlines operating flights to Australia from other areas in the broader Shanghai Catchment Area such as Hangzhou, Nangjing, Ningbo, Wuxi, Changzhou and Nantong.

¹⁰ The alliance commenced in November 2015.

- 4.58. The ACCC does not consider that airlines offering indirect flights between Sydney and Shanghai, or travel on alternative routes between Australia and China, will impose as significant a competitive constraint on the Applicants as direct flights on the route would.
- 4.59. The ACCC notes that, as a generalisation, leisure travellers are relatively more price sensitive and relatively less concerned about other factors such as travel time compared to business travellers. The more price sensitive, and less time sensitive a passenger, the more likely they are to consider indirect flights between Sydney and Shanghai to be substitutes for the services of the Applicants. The ACCC considers indirect services provided by other airlines are likely to be weaker competitive constraints on Qantas and China Eastern on this route than Qantas and China Eastern are on each other.
- 4.60. Accordingly, the ACCC considers that, over the next two years, Qantas and China Eastern are likely to remain each other's closest competitors on the Sydney – Shanghai route and that the competitive constraint that they would otherwise be likely to impose on each other will be largely lost under the proposed alliance.
- 4.61. However, the ACCC recognises that due to current travel restrictions the market conditions in which the alliance will operate over the next two years, will be substantially different from those between the time the Proposed Conduct was first authorised in October 2015 and the onset of the COVID-19 pandemic. In particular, demand for services is significantly lower than historical levels and the timing, pace and extent of a recovery in demand is uncertain. Accordingly, the ACCC considers that over the next two years demand for services between Sydney and Shanghai is likely to be significantly lower than has been the case historically.
- 4.62. Because of the current low level of demand, and lack of certainty about the recovery in demand over the next two years, the competitive constraint that Qantas and China Eastern would impose on each other over that time is also uncertain. Lower levels of demand are likely to reduce any anti-competitive detriment resulting from a lessening of competition between Qantas and China Eastern on the route.¹¹
- 4.63. Further, if Qantas and China Eastern were operating independently of each other in the next two years, it is not apparent that there would be sufficient recovery in demand to fuel a strong return to the route for the two airlines. That is, the extent to which the Applicants would compete, in the short term, is uncertain.
- 4.64. Conversely, as discussed in the ACCC's consideration of the likely public benefits of the Proposed Conduct, if the Applicants are able to cooperate over this period, the capacity to draw passengers from the combined domestic networks, to combine load volumes, undertake joint marketing and share the commercial risk in adding services is likely to support the reinstatement of services on the Sydney – Shanghai route, and other routes between Australia and China, to a greater extent than would otherwise be the case.
- 4.65. In summary, the ACCC considers that in times of more normal demand for services between Sydney and Shanghai, as was the case prior to the COVID-19 pandemic, and likely will be again in the medium to long term, the lessening in competition between the Applicants as a result of Proposed Conduct is likely to result in a significant public detriment. However, the ACCC considers that present levels of demand for services, uncertainty as the extent and timing of a recovery in demand that is likely to occur,

¹¹ As noted above, this is also true of some, but not all, of the likely public benefits of the Proposed Conduct identified by the ACCC.

and the likelihood that the Proposed Conduct will assist the Applicants in reinstating services as demand picks up, means that the extent of anti-competitive detriment that is likely to result from the Proposed Conduct over the next two years is more limited.

- 4.66. Previously, the ACCC has imposed capacity conditions to ensure that the Proposed Conduct did not result in a reduction in the frequency of services provided below that which could be expected if the alliance was not in place and Qantas and China Eastern continued to compete strongly with each other for passengers. The ACCC has decided not to impose similar conditions in this case due to the more limited anti-competitive detriment on the Sydney – Shanghai route likely to result from the Proposed Conduct over the next two years.

The Sydney – Shanghai route – coordinated effects

- 4.67. In considering other aviation alliances, the ACCC has also considered whether the alliance could increase the risk of coordinated conduct between the Applicants and other airlines operating services on relevant routes. In particular, routes with significant consumer demand and few airlines flying can create a strong incentive for those airlines to coordinate their conduct on the route, for example, through a common strategy to limit growth in capacity.
- 4.68. As discussed, the Applicants only operate overlapping services between Australia – China on the Sydney – Shanghai route. Pre the COVID-19 pandemic Qantas and China Eastern were the only airlines operating direct services on that route and the ACCC considers that timely entry or expansion by another airline onto that route is unlikely in the short term given the ongoing impacts of the COVID-19 pandemic on international travel.
- 4.69. As such, the ACCC considers that an anti-competitive detriment, in the form of coordinated conduct with other airlines on the Sydney – Shanghai route, is unlikely over the next two years.

Passenger services on routes other than Sydney-Shanghai

- 4.70. From January 2017 to February 2020 Qantas was directly operating flights on one other route between Australia and China, Sydney – Beijing. However, Qantas has decided to cease operating flights on the Sydney – Beijing; this decision was made prior to the COVID-19 pandemic (Qantas' proposed exit from the route was announced in November 2019). China Eastern has historically operated flights on various routes between Australia and China, as summarised at paragraph 2.12. However, it has not been operating direct flights on the Sydney – Beijing route.
- 4.71. As noted above, based on the information available, the ACCC considers it unlikely that Qantas would commence operating services on any route between Australia and China, other than Sydney – Shanghai, over the next two years.
- 4.72. In circumstances where it is unlikely that Qantas would be a strong competitor against China Eastern on any route between Australia and China over the next two years except, potentially, Sydney – Shanghai, the ACCC considers that the Proposed Conduct is unlikely to raise competition concerns on any route other than Sydney – Shanghai.

International air cargo transport services (freight and mail) between Australia and China

- 4.73. Freight and mail is carried in the holds of aircraft used for passenger services as well as by dedicated freighters between Australia and China.
- 4.74. The Applicants submit that the market for freight services is characterised by intense competition. They submit that routes between Australia and Asia (including China) are characterised by substantial excess capacity, meaning that consignments are vigorously contested and prices are driven down. The Applicants submit that they have been, and will continue to be, constrained by other rivals operating direct (and closely substitutable) passenger services with bellyspace for freight carriage.
- 4.75. Prior to the COVID-19 pandemic, in addition to bellyspace on passenger services directly into China (offered by airlines such as China Southern and Air China), Singapore Airlines operated 8 weekly dedicated freighters out of Australia, Cathay Pacific operated 2 weekly dedicated freighters out of Australia and Malaysia Airlines operated 2 weekly dedicated freighters out of Australia. The Applicants note that prior to COVID-19 there were also several specialised freight operators providing significant freight services from Australia to Asia, including Federal Express (12 services per week) and the United Postal Services (with six services per week out of Australia). Further, most full service airlines and specialist freight operators have large freight networks and a high frequency of freight services.
- 4.76. The Applicants submit that from a freight perspective, the barriers to entry and expansion in all relevant regions are also low. Freight capacity, particularly dedicated freight capacity, tends to quickly and closely follow demand. This means that freight services are often either introduced or cancelled on a week to week or day to day basis depending on load factors. 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 Air Services Agreement between Australia and China provides for unlimited dedicated freighter capacity for both Australian and Chinese airlines.
- 4.77. The ACCC has generally defined markets for air freight and air mail services more broadly than for passenger services as including indirect as well as direct services between points. This is because cargo transport customers are more likely (than passenger transport customers) to regard the direct and indirect service offerings of alternative service providers as close substitutes, since the ‘inconvenience’ of one or multi stop journeys is generally less of an issue for cargo than it is for passengers.
- 4.78. Given the greater competitive constraint provided by indirect flights, and the more limited extent to which Qantas and China Eastern are likely to compete on the Sydney – Shanghai route over the next two years with or without the Proposed Conduct, the ACCC considers that the Proposed Conduct is unlikely to raise competition concerns in relation to air cargo transport services.

ACCC conclusion on public detriment

- 4.79. In its 2015 assessment of the Proposed Conduct the ACCC concluded that the Proposed Conduct was likely to significantly reduce competition on the Sydney – Shanghai route. Qantas and China Eastern were each other’s closest competitors on the route, each was likely to be the others most significant competitive constraint and this competition was likely to be lost under the proposed alliance. The ACCC considered that would provide Qantas and China Eastern with the ability and incentive

to unilaterally reduce capacity, or limit growth in capacity, to increase prices on this route.

- 4.80. The ACCC remains of the view that in times of more normal demand for services between Sydney and Shanghai, as was the case prior to the COVID-19 pandemic, and likely will be again in the medium to long term, the lessening in competition between the Applicants as a result of Proposed Conduct is likely to result in a significant public detriment.
- 4.81. However, the ACCC considers that present levels of demand for services, uncertainty as the extent and timing of a recovery in demand, and the likelihood that the Proposed Conduct will assist the applicants in reinstating services as demand picks up, means that the extent of anti-competitive detriment that is likely to result from the Applicants coordinating their operations on the Sydney – Shanghai route is likely to be limited.
- 4.82. The ACCC considers that the Proposed Conduct is unlikely to result in any significant public detriments in the form of a reduction of competition on other routes between Australia and China, or for international air cargo transport services between Australia and China.

Balance of public benefit and detriment

- 4.83. The ACCC considers that faster and more sustainable reinstatement and potential growth in capacity between Australia and China is likely as a result of the Proposed Conduct, and that this represents a benefit to consumers seeking to travel between Australia and China as travel restrictions ease.
- 4.84. The ACCC also considers that the Proposed Conduct is likely to result in public benefits in the form of:
- improved products and services. Specifically, an expanded range of destinations on a single ticket, shorter journey times and improved connectivity, and
 - loyalty program benefits.
- 4.85. The ACCC considers that the Proposed Conduct is also likely to result in a small public benefit in the form of stimulation of tourism to Australia.
- 4.86. The ACCC considers that the lessening in competition between the Applicants on the Sydney-Shanghai route, and the associated public detriment, are likely to be limited over the next two years.
- 4.87. Current demand for services is low and there is uncertainty about the extent and timing of a recovery in demand that is likely to occur. Lower levels of demand are likely to reduce any anti-competitive detriment resulting in a lessening of competition between Qantas and China Eastern on the route.
- 4.88. Further, if Qantas and China Eastern were operating independently of each other, it is not apparent that there would be sufficient recovery in demand to fuel a strong return to the route by both airlines between now and March 2023. That is, the extent to which the Applicants would compete, in the short term, is uncertain. In this respect, as noted, the ACCC considers that it is likely that the Proposed Conduct will assist the applicants in reinstating services as demand picks up.
- 4.89. The ACCC also considers that the Proposed Conduct is unlikely to result in any significant public detriments in the form of a reduction of competition on other routes

between Australia and China or for international air cargo transport services between Australia and China.

- 4.90. Therefore, for the reasons outlined in this determination, the ACCC is satisfied that the Proposed Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

Length of authorisation

- 4.91. The Act allows the ACCC to grant authorisation for a limited period of time.¹² This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 4.92. The Applicants submit that seeking a short term extension of the current alliance gives them the best and fastest ability to restore confidence and sustainable services to consumers and businesses of both Australia and China in the short-medium term after the COVID-19 pandemic eases, whilst also providing the certainty to plan and implement other customer benefits in the long term. The Applicants submit that their intention will be to then seek a further extension of the Proposed Conduct beyond 2022.
- 4.93. In the draft determination the ACCC proposed to grant authorisation until 31 March 2022. In practice, this would mean that the Applicants would need to lodge an application in September 2021 (around six months before the expiry of the authorisation) for a further extension of the Proposed Conduct beyond 31 March 2022.
- 4.94. It now appears that the period of disruption to the aviation industry as a result of the COVID-19 pandemic is likely to be longer than was anticipated at the time of the draft determination. It now appears likely that Australia's border restrictions will remain in place for at least most of 2021.
- 4.95. The ACCC considers that while the extent and timing of a recovery in demand for travel between Australia and China is unclear, it is likely to take longer than anticipated at the time that the draft determination was released for opportunities for travel between Australia and China to return to their pre-pandemic state.
- 4.96. Therefore, the ACCC has decided to grant authorisation until 31 March 2023. This means that any application for a further authorisation of the Proposed Conduct would likely be lodged in September 2022. In light of the circumstances likely to be faced by the aviation in the next one to two years the ACCC considers that this is a more likely period for travel restrictions to have eased and, following that, substantive services between Australia and China to be re-established on a sustainable basis. Granting authorisation until 31 March 2023 means any further application for authorisation can be considered in this context.

¹² Subsection 91(1)

5. Determination

The application

- 5.1. On 31 July 2020 the Applicants lodged an application to revoke authorisations A91470 & A91471 and substitute authorisation AA1000526 for the ones revoked (referred to as re-authorisation). This application for re-authorisation AA1000526 was made under subsection 91C(1) of the Act.

The authorisation test

- 5.2. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.
- 5.3. For the reasons outlined in this determination, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.
- 5.4. Accordingly, the ACCC has decided to grant re-authorisation.

Conduct which the ACCC has decided to authorise

- 5.5. The ACCC has decided to revoke authorisations A91470 & A91471 and grant authorisation AA1000526 in substitution to enable the Applicants to give effect to the conduct described in an extended Joint Coordination Agreement under which the Applicants will coordinate their operations between Australia and mainland China, as described in paragraph 1.12 and defined as the Proposed Conduct.
- 5.6. The Proposed Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition or contain an exclusionary provision within the meaning of section 45 of the Act.
- 5.7. This authorisation is in effect until 31 March 2023.

Date authorisation comes into effect

- 5.8. This determination is made on 29 January 2021. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 20 February 2021.