



**Qantas Airways Limited & China Eastern Airlines Corporation
Limited –
Application for revocation of A91470 & A91471 and the substitution
of authorisation AA1000526
Interim authorisation decision
7 September 2020**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisations A91470 & A91471 and has granted interim authorisation in respect of the application for authorisation AA1000526 in substitution for the authorisations suspended. The application for revocation of authorisations A91470 & A91471 and substitution of authorisation AA1000526, was lodged by Qantas Airways Limited & China Eastern Airlines Corporation Limited (the **Applicants**) on 31 July 2020.
2. Interim authorisation is granted to enable the Applicants to give effect to an extended Joint Coordination Agreement (**JCA**) under which the Applicants will coordinate their operations between Australia and mainland China until March 2022.
3. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

4. The Applicants are Qantas Airways Limited and its related entities (**Qantas**) and China Eastern Airlines Corporation Limited and its related entities (**China Eastern**).
5. The Applicants seek reauthorisation for 18 months to give effect to an extended JCA under which the Applicants will continue to coordinate their operations between Australia and mainland China. The JCA was originally executed in 2014 and was extended until March 2022 by variation executed in June 2020.
6. An existing authorisation for coordination between the Applicants pursuant to the JCA expires on 31 October 2020. The Applicants submit that they have sought a short extension to the authorisation given the crisis and market uncertainty created by the COVID-19 pandemic. The Applicants intend to then seek a further extension of the authorisation beyond 2022.
7. The proposed coordination between the Applicants includes:
 - improving 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;
 - improving 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**).

The authorisation process

8. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

9. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Proposed Conduct while the ACCC is considering the substantive application.
10. The Applicants requested interim authorisation in order to facilitate the immediate planning and coordination of services that will be operated after 31 October 2020, when the current authorisation is due to expire.
11. The Applicants submit that:
 - The Proposed Conduct is inherently pro-competitive and will enable the immediate continuation of significant, substantiated public benefits at a time of great challenge to consumers seeking to travel, and Australian businesses seeking to import or export, between Australia and China.
 - Allowing immediate commercial coordination including joint selling to continue seamlessly throughout 2020 will ensure that services, once reinstated, have the best prospect of success.
 - Interim authorisation will not give rise to permanent changes to the relevant market dynamics or cause any detriment to consumers or others given that the Applicants are already coordinating operations pursuant to the existing authorisation and the short term nature of the extension being sought.
 - If the Applicants are required to wait until closer to October 2020 to be permitted to coordinate in respect of conduct past that date, they will be unable to continue to properly plan for recovery of the Australia-China services post the COVID-19 Pandemic, creating confusion, uncertainty and delay in developing a competitive and sustainable proposition for consumers, corporate clients and industry partners.

Consultation

12. 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).¹
13. The ACCC has received one submission, from Perth Airport, which does not specifically address the question of interim authorisation, but supports reauthorisation, although for 12 months rather than the 18 months sought by the Applicants.

¹ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

14. Further information in relation to the application for reauthorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

15. In granting interim authorisation, the ACCC considers that:

Impact on the status quo

16. Noting that the Applicants are authorised to continue to give effect to the original JCA until 31 October 2020 and that the Proposed Conduct does not materially expand the ways in which Qantas and China Eastern can coordinate, interim authorisation effectively allows the Applicants to continue with the cooperation they have been engaging in for the last five years while the ACCC considers the application for re-authorisation.
17. Interim authorisation would allow the Applicants to coordinate in relation to flights that may operate beyond 31 October 2020. If interim authorisation is granted but the ACCC does not ultimately grant the application for reauthorisation then Qantas and China Eastern would have to unwind any business activities that they had planned in reliance on the interim authorisation. The ACCC considers that this task may be significant, but notes that if interim authorisation is not granted, then the Applicants would have to undertake the same exercise of unwinding coordinated business plans by an earlier date (i.e. by 31 October 2020, when authorisations A91470 & A91471 expire).
18. The ACCC considers it unlikely that interim authorisation would have any significant impact on the status quo.

Urgency

19. With authorisations A91470 & A91471 due to expire on 31 October 2020, there is some urgency for the Applicants to have certainty that they will be able to continue planning how they would cooperate, and to then coordinate, their operations beyond that date.

Harm to the applicant and interested parties

20. If interim authorisation is not granted, the Applicants' ability to plan for, and to coordinate their operations, post 31 October 2020 is likely to be disrupted impacting both them and, as travel restrictions ease, their customers.
21. There is unlikely to be any harm to any other party if interim authorisation is granted.

Possible benefits and detriments

22. 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.
23. The ACCC recognises that due to current travel restrictions the market conditions in which the alliance will operate, at least over the 18 months for which reauthorisation is sought, will be substantially different. In particular, demand for services is likely to be significantly lower than historical levels over that period. This impacts the assessment of

both the public benefits and public detriments likely to result from the Proposed Conduct over the period for which reauthorisation is sought.

24. In considering the request for interim authorisation the ACCC's preliminary view is that there is likely to be a public benefit in continued coordination of operations between Australia and mainland China by Qantas and China Eastern. In particular through avoiding the disruption and associated costs that the cessation of coordination would create both in unwinding existing arrangements and, if as demand for services returns Qantas and China Eastern again seek to coordinate services,² in re-enlivening those arrangements. In this respect, ongoing coordination over the next 18 months is likely to ensure a more efficient reinstatement of services as travel restrictions ease.
25. Having regard to the low demand for services between Australia and China in the short term, the ACCC's preliminary view is that the public detriment likely to result from a reduction in competition between Qantas and China Eastern is likely to be smaller than it would be if there was strong demand for services between Australia and China.

Reconsideration of interim authorisation

26. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.

² If authorisation to do so is granted.