



## **Qantas and Emirates – Application for revocation of authorisation AA1000400 and substitution of authorisation AA1000625 Interim authorisation decision 23 March 2023**

### **Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisation AA1000400 and grant interim authorisation in respect of the application for authorisation AA1000625 in substitution for the authorisation suspended.
2. Interim authorisation enables Qantas Airways Limited (**Qantas**) and Emirates and their related bodies corporate<sup>1</sup> (together, the **Applicants**) to continue their coordination under their Restated Master Coordination Agreement, while the ACCC's assessment of the substantive application for authorisation continues. Interim authorisation is granted with the condition that the Applicants provide certain information to the ACCC regarding their operation on the Sydney-Christchurch route. The condition is set out in **Annexure A**.
3. Interim authorisation is granted in respect of Division 1 of Part IV of the *Competition and Consumer Act 2010* (Cth) (the **Act**) and section 45 of the Act.
4. Interim authorisation commences immediately and remains in place until the date the ACCC's final determination comes into effect, the application for authorisation is revoked, or until it is revoked.

### **The application for re-authorisation**

5. On 7 November 2022, the Applicants lodged an application for revocation of authorisation AA1000400 and substitution of authorisation AA1000625 for the one revoked (referred to as '**re-authorisation**').
6. The Applicants are seeking re-authorisation with respect to Division 1 of Part IV of the Act and section 45 of the Act<sup>2</sup> to continue their alliance and coordinate their operations across their respective networks for at least 5 years in areas including:
  - planning, scheduling, operating and capacity
  - sales, marketing, advertising, promotion, distribution strategies, reservation priority and pricing (including fares, rebates, incentives and discounts) for passengers, freight customers and agents
  - connectivity and integration of certain routes with the objective of offering customers a global network using Qantas and Emirates' networks

---

<sup>1</sup> A full list of the related bodies corporate of each of Qantas and Emirates proposed to be covered by authorisation is set out at Annexure A of the Applicants' supporting submission, 5 November 2022 (available [here](#)). Relevant Qantas entities include Jetstar Airways Pty Limited and Jetstar Asia Airways Private Limited, but excludes other Jetstar branded airlines as well as catering and cleaning services.

<sup>2</sup> The Applicants initially also sought authorisation in respect of section 47 of the Act, but the Applicants subsequently clarified that section 47 need not be included within the scope of the ACCC's determination. This clarification is available on the [public register](#).

- codeshare and interline arrangements<sup>3</sup> for passenger services and cargo on passenger flight services
- control of inventories and yield management functions
- frequent flyer programs with the objective of optimising earning and redemption opportunities for customers
- all passenger-related aspects to provide a superior, consistent level of service to customers including ground services and lounge access
- harmonising service and product standards in order to provide a seamless product to passengers
- harmonising IT systems
- joint airport facilities
- joint offices for sales activities
- potentially other aspects of operations including ground handling, carriage of cargo on dedicated freighter flight services, engineering services, joint procurement and flight operations
- where appropriate and mutually agreed, making joint submissions to authorities on operational matters, and
- services and activities that are required to facilitate any of the matters referred to above<sup>4</sup>

(the **Conduct**).

### The 2013 and 2018 authorisations

7. The Conduct, in earlier form, was previously authorised by the ACCC in 2013 and in 2018.
  - 2013 authorisations, [A91332 and A91333](#) – The ACCC considered that the Conduct was likely to result in material public benefits (through enhanced product and service offerings and improved operating efficiency, reduction of wingtip flying<sup>5</sup> and avoidance of duplicated fixed costs). While most of the routes covered by the alliance did not raise any significant competition concerns, the ACCC had concerns in relation to 4 trans-Tasman routes on which Qantas and Emirates operated overlapping services (Sydney-Auckland, Melbourne-Auckland, Brisbane-Auckland and Sydney-Christchurch). The ACCC was concerned that Qantas and Emirates would have the incentive and ability to reduce capacity and raise airfare prices on those routes. Consequently, the ACCC imposed a condition requiring the parties to report on their operation and maintain at least their pre-alliance capacity on those routes, subject to a mid-point review by the ACCC to consider whether an increase to the minimum required capacity was warranted. Following that review in May 2016, the ACCC considered it was not necessarily to impose a requirement on Qantas and Emirates to increase capacity flown on the 4 trans-Tasman routes.
  - 2018 authorisation, [AA1000400](#) – The ACCC considered the alliance would be likely to continue to result in a number of public benefits; however, the ACCC remained concerned in relation to the Sydney-Christchurch route. Similar to the 2013 authorisations, the ACCC imposed a condition requiring the Applicants to report on

---

<sup>3</sup> Codeshare refers an arrangement where one airline puts its airline code on a flight operated by another airline. Interline refers to an arrangement where passengers purchase their ticket from an airline but the flight is operated by another carrier under its own airline code.

<sup>4</sup> Applicants' supporting submission, 5 November 2022, [3.3].

<sup>5</sup> Wingtip flying refers to a situation where multiple airlines fly on the same route at the same time of day.

their operations on the Sydney-Christchurch route as well as the 4 Australia-Auckland routes. The ACCC also imposed a condition enabling it to conduct a review of capacity on the Sydney–Christchurch route at any time during the period of authorisation. This included the ability, following a review, to impose a capacity requirement on the Sydney-Christchurch route. The ACCC did not conduct a review.

8. The Applicants submit that there has been no material change to the commercial terms of the Restated Master Coordination Agreement (which underpins their alliance) since 2017. The Applicants submit that while the effects of the COVID-19 pandemic are still being felt, the Applicants' services have resumed on the relevant routes as a result of the alliance and continuation of the Conduct is expected to further facilitate capacity restoration and future expansion.<sup>6</sup>

### **The authorisation process**

9. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of 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.

### **The request for interim authorisation**

10. 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.
11. The Applicants have requested interim authorisation because authorisation AA1000400 will expire on 31 March 2023 and the ACCC will not have made a final determination about the application for re-authorisation before the existing authorisation expires.
12. In support of its request for interim authorisation the Applicants submit that:
  - The Proposed Conduct is inherently pro-competitive given Qantas' and Emirates' networks are highly complementary across markets where other key competitors with mid-point hubs are emerging from the period of COVID-19 related travel restrictions.
  - The Proposed Conduct continues existing coordination which has delivered public benefits previously recognised by the ACCC.
  - Interim authorisation will enable the Applicants to continue to work together immediately and seamlessly on the recovery of the alliance's network capacity, while also minimising financial harm, uncertainty and disruption that will be experienced if interim authorisation is not granted.
  - Interim authorisation will not cause detriment to others.
  - Interim authorisation will not give rise to permanent changes to market dynamics or prevent the market returning to its pre-authorisation state in the event final authorisation is not granted, given the Applicants have already been coordinating.

### **Consultation**

13. The ACCC invited submissions from a range of potentially interested parties including competitors, industry associations and regulatory bodies. The ACCC received 2 public submissions and a confidential submission on the application for re-authorisation but did

---

<sup>6</sup> Applicants' supporting submission, 5 November 2022, [1.9]-[1.12].

not receive any submissions on the request for interim authorisation.<sup>7</sup> The ACCC will consider submissions received in response to the application for re-authorisation in its draft determination.

14. Further information in relation to the application for re-authorisation and the request for interim authorisation, including any public submissions received by the ACCC as this matter progresses, can be obtained from the ACCC's [public register](#).

### **Reasons for decision**

15. The existing authorisation, AA1000400, is due to expire on 31 March 2023. In order to enable due consideration to be given to the application for re-authorisation, the ACCC has decided to grant interim authorisation under section 91(2) of the Act.

16. The ACCC has decided to grant interim authorisation for the following reasons:

- The ACCC's final determination in this matter is unlikely to come into effect before authorisation AA1000400 expires.
- Interim authorisation preserves the status quo and will not alter the existing market dynamics, as the Applicants have been coordinating their services under the alliance.

### **Reconsideration of interim authorisation**

17. The ACCC may review interim authorisation at any time, including in response to feedback received after the granting of this interim authorisation.

18. The ACCC's decision in relation to this interim authorisation should not be taken to be indicative of whether or not final authorisation will ultimately be granted.

---

<sup>7</sup> The public submissions received are available on the [public register](#).

## Annexure A – Condition of interim authorisation

### 1. REPORTING OBLIGATIONS

- (a) Within three months of the end of each Scheduling Season (or such longer period as is agreed with the ACCC) during the term of interim authorisation, the Applicants must provide, for each month of the previous Scheduling Season, the following information to the ACCC:
  - (i) for each Applicant separately, the total number of seats flown by the Applicants by cabin class on each Relevant Route;
  - (ii) for each Applicant separately, the total number of passengers identifying separately
    - (a) Point to Point Passengers and
    - (b) Connecting Passengers, identified by the destination or origin travelled to and/or fromflown by the Applicants by cabin class on each Relevant Route;
  - (iii) for each Applicant separately, total passenger revenue on each Relevant Route broken down between Point to Point and Connecting Passengers;
  - (iv) for each Applicant separately, and for the Alliance, by cabin class, total passenger and cargo revenue on each Relevant Route, average revenue per available seat kilometre (RASK) and revenue passenger kilometres (RPK), in accordance with the information that is retained in their financial accounting system;
  - (v) if the revenue figures provided in accordance with clause 2(a)(iii) do not include all ancillary charges (including but not limited to in-flight food and entertainment purchases and excess or additional baggage purchases), the total amount of ancillary charges for each Relevant Route, where that information is available to the Applicant in accordance with the relevant Applicant's financial accounting systems;
  - (vi) for each Applicant separately, operating cost on each Relevant Route and average cost per available seat kilometre (CASK) both in total and disaggregated by fixed and variable costs as is reported in the relevant Applicant's financial accounting systems, including but not limited to:
    - (a) all direct costs;
    - (b) fixed operating costs; and
    - (c) an allocation of overheads.
- (b) Within three months of the end of each Scheduling Season during the term of interim authorisation, each of the Applicants must separately provide to the

ACCC, for each month of the previous Scheduling Season, the average fare by cabin class for each Service, for each Relevant Route.

- (c) The Applicants must provide a written description of the methodology used to calculate the revenue and cost figures provided in accordance with clauses 2(a)(iii) and (iv), and the ancillary charge figures provided in accordance with clause 2(a)(v) which description must include particulars of:
  - (i) all inclusions (e.g., any taxes or surcharges) and exclusions; and
  - (ii) any changes to the Applicants' methodology compared to the methodology used for reporting under this clause 1 for the previous Scheduling Season.
- (d) The information in this clause 1 must be provided to the ACCC in an accessible spreadsheet format.
- (e) The information in this clause 1 must be provided to the following email address: exemptions@acc.gov.au.

## 2. DEFINITIONS AND INTERPRETATION

**ACCC** means the Australian Competition and Consumer Commission.

**Applicants** means Qantas Airways Limited (Qantas), Emirates and their related bodies corporate.

**Connecting Passenger** means any passenger carried by an Applicant on a single Relevant Route starting in Australia and ending in New Zealand, or vice versa, who before or after that Relevant Route, as part of the same journey, travels from or to another destination (domestic or international) operated by Qantas or Emirates.

**NS Season** means the northern summer season from 1 April to 31 October.

**NW Season** means the northern winter season from 1 November to 31 March.

**Point to Point Passenger** means any passenger carried by an Applicant on a single Relevant Route starting in Australia and ending in New Zealand, or vice versa.

**Relevant Route** means any of the following city pairs:

- (a) Sydney – Auckland;
- (b) Melbourne – Auckland;
- (c) Brisbane – Auckland; and
- (d) Sydney – Christchurch.

**Scheduling Season:** means either the NS Season or the NW Season.

**Service** means any itinerary offered by Qantas or Emirates:

- (a) starting in Australia and ending in New Zealand, or vice versa;
- (b) starting and ending in Australia and including at least one destination in New Zealand; or

- (c) starting and ending in New Zealand and including at least one destination in Australia

comprising one or more flight segments (including domestic flight segments) available on a single ticket.