



## Qantas Airways Limited & China Eastern Airlines Corporation Limited – Decision to vary compliance with clause 1(a), 1(c), 1(d) and 6.6(a) of conditions of authorisations A91470 & A91471

4 September 2020

### Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to:
  - waive the requirement on Qantas Airways and China Eastern Airlines (the **Applicants**) to comply with clauses 1(a) and 1(c) of the conditions of authorisations A91470 & A91471 for the Northern Summer 2020<sup>1</sup> scheduling season,
  - waive the requirement for the Applicants to comply with clause 1(d), and
  - waive the requirement for the Applicants to comply with clause 6.6(a) for the Northern Winter 2019<sup>2</sup> and Northern Summer 2020 scheduling seasons.

### Background

2. On 21 August 2015 the ACCC granted conditional authorisation for an alliance between the Applicants in order to coordinate their operations between Australia and China pursuant to a joint coordination agreement until 31 October 2020. The conditions of the authorisation require the Applicants to meet certain seat capacity requirements and provide a written audit report on compliance within three months of the end of a scheduling season (see Attachment B of the [ACCC's Determination](#)).

### The request to vary compliance with conditions

3. On 28 July 2020, the Applicants lodged a request to vary the conditions of authorisations A91470 & A91471 on the basis of Exceptional Circumstances (defined under Chapter 8 of the conditions of Authorisation), specifically clauses 1(a), 1(c), 1(d) and 6.6(a) of Attachment B – Conditions of Authorisation (**the Conditions**). These circumstances relate to the outbreak of the novel coronavirus (**COVID-19**) and subsequent travel restrictions to China.
4. Travel restrictions imposed in response to COVID-19 have caused a suspension of flights to and from China. Consequently, the Applicants are unable to satisfy the conditions of authorisations A91470 & A91471 and seek a variation to the seat capacity obligations on the Sydney – Shanghai City Pair and Australia – Shanghai aggregate routes in clauses 1(a), 1(c), 1(d) and the reporting obligations in clause 6.6(a) of the Conditions.
5. Specifically, the Applicants request that:
  - Clauses 1(a) and 1(c) of the Conditions, which require the Applicants to operate minimum levels of seat capacity on the Sydney – Shanghai City Pair and in aggregate across all routes between Australia and Shanghai, be waived in respect of the Northern Summer 2020 Scheduling Season.

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<sup>1</sup> 1 April 2020 to 31 October 2020

<sup>2</sup> 1 November 2019 to 31 March 2020

- Clause 1(d), which requires the Applicants to increase Seat Capacity on routes between Australia and Shanghai by a compound annual growth rate (**CAGR**) of 4% over the term of the authorisation, be waived or expressed to be a requirement to achieve a 4% CAGR measured at four years into the term of the authorisation (i.e. measured on a rolling basis from November 2015 to October 2019).
  - Clause 6.6(a), which requires an Approved Independent Auditor to provide to the ACCC a written Audit Report in relation to the Applicant's compliance with its obligations under clause 1 within three months of the end of each Scheduling Season, be waived for the Northern Winter 2019 and Northern Summer 2020 scheduling seasons because the Approved Independent Auditor cannot travel to China to complete the report.
6. Further information regarding the application is available on the ACCC's [public register](#).

### The variation process

7. Pursuant to clause 5.1(h) of authorisations A91470 & A91471 the ACCC may, in its absolute discretion, decide to vary the conditions or dismiss the application for variation.
8. A request to the ACCC for a variation must indicate the nature of the variation sought and the circumstances claimed by the Applicants and must be accompanied by evidence supporting the application. The ACCC will consult with the applicant and allow the applicant an opportunity to make submissions within a specified period. The ACCC may also undertake public consultation, including inviting submissions from any interested person within a specified period of time. The ACCC did not publicly consult on this application to vary the conditions.
9. Pursuant to clause 5.1(g), the ACCC must have regard to any entry or expansion by airlines other than the Applicants on any Route and any commencement of services by the Applicants on any Australia – China Route that neither the Applicants serviced at the commencement of the term of authorisation. The ACCC has considered these factors and determined that they do not prevent the variation sought.

### Reasons for decision

10. The ACCC considers that:
- COVID-19 and associated travel restrictions constitute Exceptional Circumstances under the conditions of authorisation, and
  - the subsequent travel restrictions imposed by various governments in respect of travel to and from China, and the corresponding suspension in air travel along the specified paths, provides a reasonable basis for allowing the requested variations to the compliance obligations under the conditions of authorisation.
11. Accordingly, the ACCC has decided to waive the requirement for the Applicants to comply with clauses 1(a), 1(c), 1(d) and 6.6(a) of conditions of authorisations A91470 & A91471.
12. As a result of this variation, the obligations on the Applicants will be varied as follows:
- Clauses 1(a) and 1(c) are waived in respect of the Northern Summer 2020 Scheduling Season,
  - Clause 1(d) is waived, and
  - Clause 6.6(a) is waived in respect of the Northern Winter 2019 and Northern Summer 2020 scheduling seasons.