



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

25 March 2020

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to vary the requirement on Qantas Airways and China Eastern Airlines (the Applicants) to comply fully with clauses 1(a) and 1(c) of the conditions of authorisations A91470 & A91471 for the Northern Winter 2019¹ scheduling season.

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 (see Attachment B of the ACCC's Determination).

The request to vary compliance with conditions

3. On 27 February 2020, the Applicants submitted a request to vary their compliance with clauses 1(a) and 1(c) of authorisations A91470 & A91471 on the basis of Exceptional Circumstances (defined under Chapter 8 of the conditions of Authorisation). These circumstances relate to the outbreak of the novel coronavirus (COVID-19 Outbreak) and the subsequent flight and entry restrictions imposed by various governments in respect of travel to and from China.
4. The travel restrictions have caused a suspension of flights to and from China. Consequently, the Applicants seek a variation to the seat capacity obligations on Sydney – Shanghai City Pair and Australia – Shanghai aggregate routes in clauses 1(a) and 1(c) of authorisations A91470 & A91471 for the Northern Winter 2019 scheduling season only.
5. Specifically, the Applicants seek to vary the requirement to fly not less than 100% of the Base Year Seat Capacity by:
 - 6,108 seats (or a 3% reduction in seat capacity) for the Sydney – Shanghai City Pair, and
 - 10,558 seats (or a 3.34% reduction in seat capacity) for the Australia – Shanghai aggregate.
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, determine to vary the conditions or dismiss the application for variation.

¹ 1 November 2019 to 31 March 2020

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.
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. The ACCC has considered these factors and determined that they do not prevent the variation sought.

Consultation

10. The ACCC wrote to interested parties to advise them of the application to vary conditions and invited submissions. No submissions were received.

Reasons for decision

11. The ACCC considers that:
 - The outbreak of the Novel coronavirus (COVID-19) and associated travel restrictions constitute Exceptional Circumstances under the conditions of authorisation,
 - The subsequent flight 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 variation to the compliance obligations of the Applicants for the Northern Winter 2019 scheduling season.
12. Accordingly, the ACCC has decided to vary the requirement on the Applicants to comply fully with clauses 1(a) and 1(c) of conditions of authorisations A91470 & A91471 for the Northern Winter 2019 scheduling season.
13. As a result of this variation, the obligations on the Applicants will be varied as follows:
 - For clause 1(a), for the Northern Winter 2019 scheduling season, the Applicants must make available not less than 97 per cent of the applicable Sydney-Shanghai City Pair Scheduling Season Base Year Seat Capacity (186,748 seats).
 - For clause 1(c), for the Northern Winter 2019 scheduling season, the Applicants must make available not less than 96 per cent of the applicable Australia – Shanghai Scheduling Season Base Year Seat Capacity (313,084 seats). To avoid doubt, this obligation requires the Applicants to make the specified capacity available in aggregate across all Routes between Australia and Shanghai.
14. The Applicants' compliance with the varied Sydney – Shanghai and Australia – Shanghai Scheduling Season Base Year Seat Capacity for Northern Winter 2019 will be subject to compliance audits in accordance with clause 6.6 of the conditions of authorisations A91470 & A91471.