



# Draft Determination

Application for revocation of AA1000526 and the substitution of  
authorisation AA1000624

lodged by Qantas Airways Limited and China Eastern Airlines  
Corporation Limited

in respect of an Extended Joint Coordination Agreement

Authorisation number: AA1000624

Date: 15 September 2023

Commissioners: Cass-Gottlieb  
Keogh  
Lowe  
Brakey  
Carver  
Crone  
Ridgeway

## Summary

The ACCC proposes to deny authorisation to Qantas and China Eastern and their related bodies corporate. Qantas and China Eastern have sought authorisation to enable them to continue to cooperate on their operations between Australia and China pursuant to an Extended Joint Coordination Agreement until 31 March 2024.

On current information, the ACCC is not satisfied in all the circumstances that the likely public benefits arising from the conduct will outweigh the likely public detriment during the period for which authorisation is sought (until 31 March 2024).

The application by Qantas and China Eastern was lodged in November 2022 when travel restrictions between Australia and China were still in place. However, the last of these travel restrictions were removed in March 2023. Since then, there has been a significant recovery of passenger demand. The ACCC considers that that demand for air travel between Australia and China is likely to continue to grow during the period for which authorisation is sought, and will be stimulated by:

- China's recent reinstatement of Australia's approved destination status, allowing the return of tour groups
- Tourism Australia's recent launch in China of a major campaign promoting Australia as a destination for Chinese travellers.

The ACCC considers that the conduct would be likely to result in minimal public benefits by enhancing the Applicants' product and service offerings in terms of:

- increased convenience for the small proportion of passengers who travel on multi-sector journeys involving both airlines
- greater schedule choice and flexibility on the route on which the Applicants' operations overlap (Sydney – Shanghai) and
- enhanced loyalty program benefits.

The ACCC also considers that it is possible that the conduct will result in further public benefits by facilitating additional frequencies on routes other than Sydney – Shanghai. However, at this time there is not sufficient evidence for the ACCC to be satisfied this would be likely. The ACCC invites the Applicants to provide evidence, including examples, to substantiate their claim that the key benefit achieved during the requested period of authorisation will be the ability of the conduct to support capacity reinstatement.

However, the ACCC also considers that the conduct would be likely to result in significant public detriment on the Sydney – Shanghai route, where the Applicants are each other's closest competitor. The ACCC is concerned that the conduct would provide the Applicants with the ability and incentive to profitably raise prices (airfares) by limiting or delaying the introduction of additional frequencies on this route.

The ACCC considers that it is appropriate that the interim authorisation granted on 30 March 2023 remain in place while the ACCC continues its assessment of the current application.

The conduct was first authorised by the ACCC in 2015 for 5 years, subject to capacity maintenance and growth conditions and reporting obligations to address significant competition concerns on the Sydney – Shanghai route. The 2015 authorisation

expired during the COVID-19 pandemic. In July 2020, Qantas and China Eastern sought authorisation to continue their coordination under a varied agreement for 18 months. The ACCC granted authorisation until March 2023 with no capacity or reporting conditions in light of the severe disruption to air travel between Australia and China expected over that period.

The ACCC invites submissions in relation to this draft determination by 6 October 2023 before it makes its final determination.

## 1. The application for revocation and substitution

- 1.1. On 9 November 2022, Qantas Airways Limited (**Qantas**) and China Eastern Airlines Corporation Limited (**China Eastern**) (together, the **Applicants**) lodged with the ACCC an application to revoke authorisation AA1000526 and substitute authorisation AA1000624 for the one revoked. The Applicants are seeking authorisation for themselves and their related bodies corporate<sup>1</sup> to continue to coordinate on their operations between Australia and mainland China pursuant to an extended Joint Coordination Agreement and associated agreements (the **Extended JCA**) for 12 months until 31 March 2024.
- 1.2. This application for revocation and substitution AA1000624 was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.3. If granted, an authorisation provides businesses with protection from legal action under the competition provisions in Part IV of the Act. The ACCC has discretion to grant authorisation (s 88(1) of the Act) but must not do so unless it is satisfied in all the circumstances that the conduct would result in benefit to the public that would outweigh any likely public detriment (s 90(7) of the Act (**the authorisation test**)).
- 1.4. On 30 March 2023, the ACCC suspended the operation of authorisation AA1000526 and granted interim authorisation in substitution. Interim authorisation suspended the operation of authorisation AA1000526 (which was due to expire on 31 March 2023) and enables the Applicants to continue the status quo and coordinate on their operations under the Extended JCA while the ACCC assesses the substantive application.<sup>2</sup> The interim authorisation will remain in place until the date the ACCC's final determination comes into effect, the application for authorisation is withdrawn, or until it is revoked.

## The Applicants

### Qantas Airways Limited

- 1.5. Qantas is Australia's largest domestic and international airline. Qantas also operates related businesses including freight operations, loyalty programs and various airlines subsidiaries, including Jetstar, QantasLink and Network Aviation.
- 1.6. The international destinations to which Qantas currently operates are set out in Figure 1 below.

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<sup>1</sup> A full list of the related bodies corporate of each of Qantas and China Eastern proposed to be covered by authorisation is set out at Annexure A of the Application for authorisation dated 9 November 2022.

<sup>2</sup> See ACCC interim authorisation decision suspending the operation of authorisation AA1000526 [here](#).

**Figure 1: Qantas International Destinations (ex Australia)<sup>3</sup>**

Region	Destinations
Pacific	Apia, Auckland, Christchurch, Dili, Nadi, Norfolk Island, Noumea, Nuku'alofa, Port Moresby, Queenstown, Wellington
Asia	Bangkok, Bengaluru, Delhi, Denpasar, Hong Kong, Jakarta, Manila, Seoul, Shanghai (from October 2023), Singapore, Tokyo Haneda
Europe	London Heathrow, Rome
Americas	Dallas/Fort Worth, Honolulu, Los Angeles, New York JFK, San Francisco, Santiago, Vancouver
Africa	Johannesburg

1.7. In addition to its alliance with China Eastern, Qantas is currently a party to the following airline alliances:

- An alliance with Emirates, which was authorised by the ACCC until 8 September 2028.<sup>4</sup>
- An alliance with American Airlines, which was authorised by the ACCC until 16 April 2026.<sup>5</sup>
- oneworld alliance involving 15 international airlines.<sup>6</sup>

1.8. Qantas also has codeshare and interline arrangements with several other international airlines.

1.9. Jetstar Airways, a part of the Qantas Group, offers low-cost domestic and international flight services between Australia, the Pacific and New Zealand. The international destinations to which Jetstar currently operates are set out in Figure 2.

**Figure 2: Jetstar International Destinations (ex Australia)<sup>7</sup>**

Region	Destinations
Pacific	Auckland, Christchurch, Dunedin, Nadi, Queenstown, Rarotonga, Wellington
South East Asia	Bangkok, Denpasar, Ho Chi Minh City, Phuket, Singapore
North East Asia	Osaka, Seoul, Tokyo-Narita
Americas	Honolulu

1.10. Qantas is related to 2 other Jetstar-branded joint ventures in Asia:

<sup>3</sup> As at 31 August 2023.

<sup>4</sup> See ACCC final determination granting authorisation to Qantas and Emirates [here](#).

<sup>5</sup> See ACCC final determination granting authorisation to Qantas and American Airlines [here](#).

<sup>6</sup> See oneworld Alliance: <https://www.oneworld.com/>

<sup>7</sup> Information derived from [Centre for Aviation](#) (9 August 2023).

- Jetstar Asia Airways Pte Limited (**Jetstar Asia**), in which the Qantas Group has a 49 per cent interest, is incorporated in Singapore and operates flights between Singapore and various destinations in Asia.
- Jetstar Japan Co Ltd (**Jetstar Japan**), in which the Qantas Group has a 33.32 per cent shareholding, is incorporated in Japan and operates flights within Japan and internationally.

1.11. The ACCC has previously authorised coordination between Qantas, Jetstar Airways and the Jetstar-branded joint ventures in March 2013,<sup>8</sup> February 2018<sup>9</sup> and most recently in April 2023 until 11 May 2028.<sup>10</sup>

### **China Eastern Airlines Corporation Limited**

- 1.12. China Eastern is a full-service airline and one of China’s 3 major state-owned 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.
- 1.13. China Eastern Air Holding Company 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.
- 1.14. China Eastern is one of the largest airlines in the world by passengers flown. As at the end of 2021, China Eastern operated a modernised fleet comprised of 758 passenger 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.
- 1.15. The international destinations to which China Eastern currently operates are set out in Figure 3.

**Figure 3: China Eastern Destinations (ex China)<sup>11</sup>**

Region	Destinations
Pacific	Auckland, Sydney, Melbourne
Asia	Bali Denpasar, Bangkok, Busan, Chiang Mai, Colombo, Dhaka, Hanoi Noi Bai Airport, Ho Chi Minh City Tan Son Nhat Airport, Hong Kong International Airport, Jakarta, Jeju, Kaohsiung International Airport, Kuala Lumpur, Macau, Maldives, Mandalay, Manila, Nagoya, Osaka, Phnom Penh, Phuket, Seoul, Siem Reap, Singapore, Taipei, Taiwan, Tokyo, Vientiane, Yangon
Europe	Amsterdam, Frankfurt, London, Moscow, Paris, Rome, Saint Petersburg
Americas	Toronto, Los Angeles, New York
Middle East	Madinah, Dubai

<sup>8</sup> See Qantas Airways Limited & Jetstar Airways Pty Ltd Authorisation A91314 & A91315 on the ACCC’s [public register](#).

<sup>9</sup> See Qantas Airways Limited & Jetstar Airways Pty Ltd Authorisation AA1000395 on the ACCC’s [public register](#).

<sup>10</sup> See Qantas Airways Limited & Jetstar Airways Pty Ltd Authorisation AA1000626 on the ACCC’s [public register](#).

<sup>11</sup> Information derived from [Centre for Aviation](#) (9 August 2023).

1.16. China Eastern also owns Shanghai Airlines, which operates 105 aircraft to provide domestic (China) and international services but has never operated services between Australia and China. It is also a member of the SkyTeam alliance. The international destinations to which Shanghai Airlines currently operates are set out in Figure 4.

**Figure 4: Shanghai Airlines Destinations (ex China)<sup>12</sup>**

Region	Destinations
Asia	Bangkok, Hong Kong, Kota Kinabalu, Kuala Lumpur, Macau, Phuket, Seoul, Taipei
Europe	Budapest

1.17. China Eastern’s indirectly owned subsidiary, China Eastern Air Logistics Co Ltd, provides freight services.

## The Conduct

1.18. In November 2014, the Applicants entered into a Joint Coordination Agreement (**JCA**) for an initial term of 5 years. The Applicants advise that in July 2020, they entered into an Extended JCA without any material changes to the JCA until March 2022, which has now been further extended (subject to regulatory approvals) until 31 March 2024.

1.19. The Extended JCA provides for closer coordination than the initial JCA which was authorised in 2015, as the Extended JCA provides for full metal neutrality, meaning Qantas and China Eastern are indifferent as to whether they sell tickets for a flight operated using its own aircraft or a flight operated using its partner’s aircraft.

1.20. The Applicants are currently seeking authorisation for themselves and their related bodies corporate under the terms of the Extended JCA, which provides for the Applicants to coordinate in respect of:

- 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 Applicants’ frequent flyer programs
- increasing the international competitiveness of both Applicants

<sup>12</sup> Information derived from [Centre for Aviation](#) (9 August 2023).

- easing the planning of itineraries through the provision of better information to agents.
- 1.21. Under the terms of the Extended JCA, the Applicants may coordinate activities in respect of freight operations, sales and marketing (including joint promotions), holiday products and packages, distribution, customer rebates, incentives and discounts, agency arrangements, ground handling and airport services.
  - 1.22. The Applicants may also seek to jointly procure goods and services which include inflight catering, lounges, logistics, corporate services, inflight goods and services, crew accommodation, labour hire, airport charges, fuel, ground handling, aircraft maintenance, inflight entertainment and aircraft components.
  - 1.23. The Applicants have agreed to allow sales of each other's services on a freesale basis and will pay each other regardless of which carrier's code or ticket the passenger is travelling on. By selling in this way, each carrier has the ability to sell each other's capacity using the full range of available inventory (i.e. each carrier has access to every seat on the other carrier's flights which are operated between Australia and China).
  - 1.24. All of the coordination and activities set out in paragraphs 1.20 - 1.23 is collectively the **Conduct** for which authorisation is sought.
  - 1.25. The Conduct includes coordination between Qantas, China Eastern and their related bodies corporate.
  - 1.26. The Applicants seek a short-term authorisation until 31 March 2024 due to the uncertainty created by the COVID-19 pandemic, particularly in circumstances where at the time of lodging their application on 9 November 2022, borders between China and Australia had not re-opened. On 28 December 2022, the Chinese Aviation Administration of China announced arrangements for the resumption of international passenger flights as of 8 January 2023. The Australian Government lifted restrictions on flights from China landing in Australia with effect from 11 March 2023. The Applicants submit that they intend to seek a longer-term authorisation in relation to ongoing cooperation at a later date.

## 2. Background

### Previous authorisations

- 2.1. On 21 August 2015, the ACCC granted authorisations A91470 and A91471 with conditions (**the 2015 authorisations**) until 31 October 2020 to enable coordination between the Applicants for their operations between Australia and mainland China pursuant to the initial JCA.<sup>13</sup>
- 2.2. While the ACCC accepted that some public benefits would be likely to result, the ACCC was concerned that Qantas and China Eastern were each other's closest competitor on the Sydney – Shanghai route, and the conduct would provide them with the ability and incentive to unilaterally increase prices on this route by reducing, or limiting growth in, capacity. The ACCC also indicated that, in the absence of significant growth in capacity over the entire term of the alliance, it may be difficult for the ACCC to accept that the alliance facilitates public benefits relating to the addition of new frequencies and destinations.

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<sup>13</sup> See ACCC's determination granting conditional authorisation A91470 & A91471 [here](#).

- 2.3. 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 a 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 of 4%
  - 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.
- 2.4. On 27 February 2020, the Applicants requested that the ACCC vary their seat capacity obligations on the Sydney – Shanghai city pair and Australia – Shanghai aggregate routes in accordance with the Conditions of Authorisation.<sup>14</sup> Those circumstances related to the outbreak of the COVID-19 pandemic and the subsequent flight and entry restrictions imposed by various governments in respect of travel to and from China. On 25 March 2020, the ACCC decided to vary the requirement. On 28 July 2020, the Applicants requested another variation to the conditions of authorisation.<sup>15</sup> On 4 September 2020, the ACCC decided to waive the requirements under the conditions.
- 2.5. On 31 July 2020, the Applicants lodged an application for revocation and substitution for the extended JCA and sought interim authorisation. On 29 January 2021, the ACCC granted authorisation AA1000526 (the **2021 authorisation**) until 31 March 2023. In doing so, the ACCC considered that the disruption to the aviation industry resulting from the COVID-19 pandemic was likely to be longer than originally anticipated due to slower recovery in passenger demand for air passenger transport services between Australia and China.<sup>16</sup> Accordingly, the ACCC decided not to impose the capacity conditions that had previously applied pre-COVID-19.

## The Applicants' operations between Australia and China

- 2.6. In the 5 years prior to the COVID-19 pandemic, demand and supply of Australia – China air passenger transport services grew significantly. By 2019 China was Australia's leading source of visitors, with 1.3 million visitors to Australia (15% of all international arrivals) compared to 366,000 visitors in 2009.<sup>17</sup>
- 2.7. The Applicants submit that in the year ending October 2015 there were 5 airlines operating direct (non-stop) services between Australia and China.<sup>18</sup> By the year ending December 2019, the number of airlines operating services between Australia and China had grown to 10<sup>19</sup> and scheduled capacity (seats) on direct services between

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<sup>14</sup> See clauses 1(a) and 1(c) of Attachment B – Conditions of Authorisation of authorisations A91470 & A91471.

<sup>15</sup> See clauses 1(a), 1(c), 1(d) and 6.6(a) of Attachment B – Conditions of Authorisation A91470 & A91471.

<sup>16</sup> See ACCC's determination granting authorisation AA1000526 [here](#).

<sup>17</sup> Source: Australian Bureau of Statistics latest release of Overseas Arrivals and Departures, figures [here](#). Note: Statistics for May 2023 are provisional estimates.

<sup>18</sup> Being Qantas/Jetstar, China Eastern, Air China, China Southern and Sichuan Airlines.

<sup>19</sup> Being Qantas/Jetstar, China Eastern, Air China, China Southern and Sichuan Airlines, Beijing Capital Airlines, Xiamen Airlines, Hainan Airlines, Donghai Airlines and Tianjin Airlines.

Australia and China increased by 98 percent.<sup>20</sup> The increase in capacity on the Sydney – Shanghai route over the same period was more modest – 8% in total.<sup>21</sup>

## **Qantas**

- 2.8. Immediately prior to the COVID-19 pandemic, Qantas operated passenger services on one route between Australia and China: Sydney – Shanghai. Qantas offered a single flight on a daily basis each way using Airbus A330 aircraft. Qantas ceased operating this service in February 2020. The Applicants submit that Qantas intends to re-commence a daily Sydney – Shanghai service using A330 aircraft in the Northern Winter 2023 season (commencing 29 October 2023). The Applicants submit that these services are currently published and being sold.<sup>22</sup>
- 2.9. 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. With the onset of the COVID-19 pandemic, Qantas brought forward its exit from the route and ceased services on 9 February 2020. Qantas has no plans to resume this service.
- 2.10. Prior to the COVID-19 pandemic, Qantas also operated a dedicated freighter service between Sydney and Chongqing 2 times a week and between Sydney and Shanghai once a week. These services continued through the COVID-19 pandemic to the date of this draft determination.<sup>23</sup>
- 2.11. Jetstar ceased operating services between Australia and China in December 2019. Jetstar's services between Australia and China were between the Gold Coast and Wuhan (operating from October 2015 until September 2016) and between Melbourne and Zhengzhou (operating from December 2017 until December 2019). The Applicants submit that Jetstar has no plans to re-commence services between Australia and China in the foreseeable future. However, the Applicants note that Jetstar Asia and Jetstar Japan operate services between China and Singapore/Japan respectively.<sup>24</sup>

## **China Eastern**

- 2.12. Immediately prior to the COVID-19 pandemic, China Eastern operated:
- 14 services per week (each way) between Sydney and Shanghai<sup>25</sup>
  - 4 services per week (each way) between Brisbane and Shanghai
  - 14 services per week (each way) between Melbourne and Shanghai
  - 3 services per week (each way) seasonally between Perth and Shanghai
  - 3 services per week (each way) between Sydney and Hangzhou
  - 3 services per week (each way) between Sydney and Nanjing

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<sup>20</sup> The Applicants' application for revocation and substitution AA1000526 dated 31 July 2020 is available on the [public register](#), [Page 11].

<sup>21</sup> The Applicants' application for revocation and substitution AA1000526 dated 31 July 2020 is available on the [public register](#), [Page 12].

<sup>22</sup> Applicants' submission dated 10 March 2023, [2].

<sup>23</sup> The Applicants' application for revocation and substitution AA1000526 is available on the [public register](#), [Page 30].

<sup>24</sup> Applicants' submissions dated 10 May 2023, [2].

<sup>25</sup> Using Airbus A330 and Boeing 777 aircraft.

- 3 services per week (each way) between Sydney and Wuhan
- 2 services per week (each way) between Sydney and Kunming.

2.13. China Eastern currently operates:<sup>26</sup>

- 11 services per week (each way) between Sydney and Shanghai (using larger aircraft than prior to the pandemic)<sup>27</sup>
- 10 services per week (each way) between Melbourne and Shanghai
- 3 services per week (each way) between Sydney and Wuhan
- 3 services per week (each way) between Sydney and Beijing (via Nanjing).

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

## Impact of the COVID-19 pandemic

2.15. The COVID-19 pandemic caused significant disruption to air passenger services globally.

2.16. At the time the Applicants lodged their application, the border between Australia and China remained closed for international travel. The Chinese border reopened to international travel on 8 January 2023. The Australian Government lifted restrictions on flights from China landing in Australia with effect from 11 March 2023.

2.17. Qantas submits that while there has been a rebound in demand following China's border re-opening, recovery is still expected to be patchy.<sup>28</sup> Qantas submits that consumers are likely to continue to perceive a relatively higher risk around the potential for disruption / potential for restrictions or border closures relative to travelling on other routes. While student traffic has ramped up, holiday leisure passenger demand is likely to be slow to return to pre-pandemic levels. Additionally, demand is likely to be dampened due to geopolitical tensions.

2.18. Qantas submits that in the longer term it expects demand to recover and eventually exceed pre-pandemic levels.

2.19. In terms of reinstatement of supply, Qantas submits that market capacity levels are forecast (as at March 2023) to build back as follows:<sup>29</sup>

- For Australia-Shanghai services: 10% of pre-covid capacity (based on published schedules) in FY23, approximately 50% of pre-covid capacity in FY24, and approximately 80% of pre-covid capacity in FY 2025.
- For Australia-China services: 14% of pre-covid capacity (based on published schedules) in FY23, approximately 50% of pre-covid capacity in FY24, and approximately 75% of pre-covid capacity in FY 2025.

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<sup>26</sup> As at 19 July 2023.

<sup>27</sup> Comprising a daily service using Airbus A350-900 aircraft and additional flights 4 days per week using a Boeing 777 aircraft. The ACCC understands that the total number of seats flown on this route by China Eastern in July 2023 (11 services per week) exceeded the total number of seats flown in July 2019 (14 services per week).

<sup>28</sup> Applicants' submission dated 10 March 2023, [2].

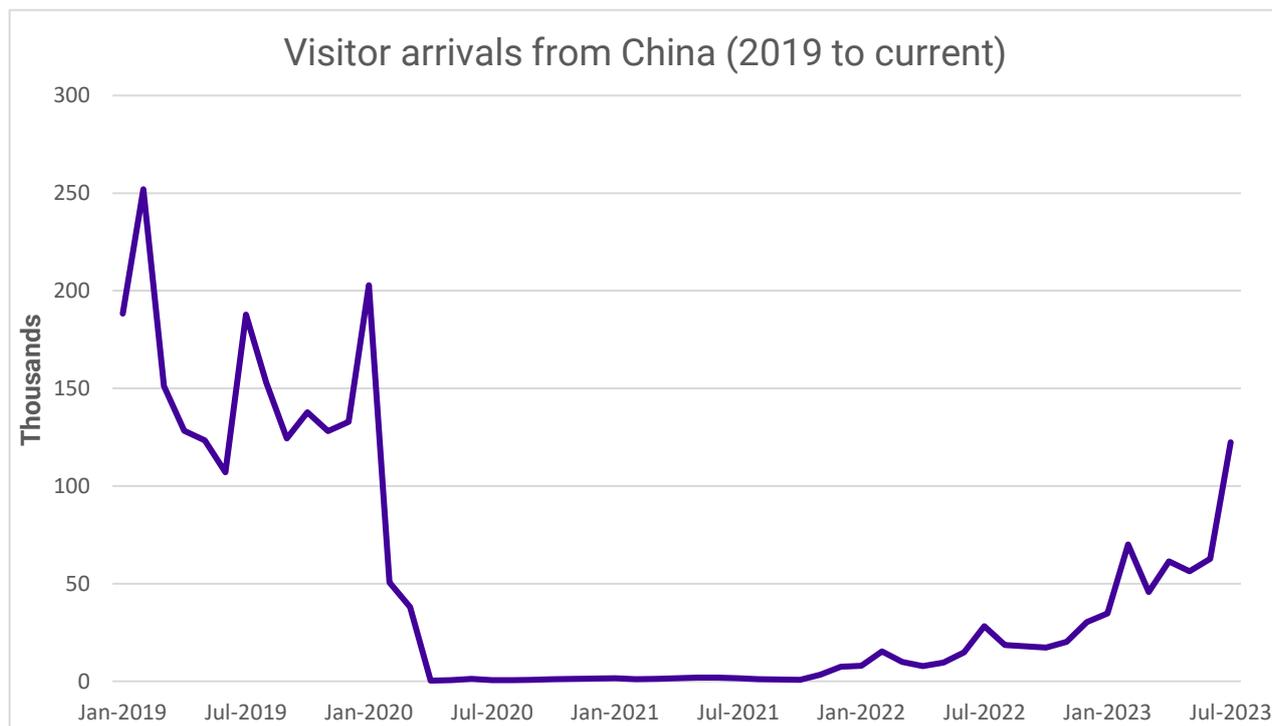
<sup>29</sup> Applicants' submission dated 10 March 2023, [2].

- 2.20. Qantas submits that various factors led to Qantas deciding to defer restarting the Sydney – Shanghai route from March 2023 to October 2023.<sup>30</sup> In particular, Qantas submits they are still managing several operational and regulatory challenges including aircraft availability. For the international network in particular, these challenges include:
- the timeliness of the A380 return to service which has meant that other fleet have needed to cover routes normally flown using that aircraft
  - Qantas has had limited flexibility in respect of its ability to deploy or redeploy cabin crew across its network at short notice, because of the need to complete hiring and training programs reinstated post COVID-19.
- 2.21. Qantas further submits that significant operational plans could only begin to be fully actioned when the relevant authorities announced the opening of borders. The operational considerations include, but are not limited to, allocating fleet time, crew resourcing, hiring local staff, confirming contractual arrangements for catering, lounge, third-party overwing and underwing services, managing slot applications and obtaining regulatory approvals of filed schedules (liaising with the Department of Infrastructure, Transport, Regional Development, Communication and the Arts in Australia and with the Civil Aviation Administration of China).
- 2.22. Qantas submits that these operational plans require lead-time and investment, all of which are dependent on an operational commencement date. In the early part of 2023, Qantas submits they had begun to allocate assets to existing routes in need of additional capacity and/or new routes to enable the utilisation of available crew and fleet assets. Qantas submits that, given scheduling/planning generally works on a seasonal basis (divided into Northern Summer and Northern Winter), assets had to be committed and deployed with sufficient lead-time for the Northern Summer season.
- 2.23. Latest available Australian Bureau of Statistics international visitor arrival data indicates that the number of Chinese nationals visiting Australia in July 2023 was around 65% of the number in July 2019 (see figure 5 below).

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<sup>30</sup> Applicants' submission dated 10 March 2023, [2].

Figure 5: Aggregate Visitor Arrivals from China<sup>31</sup>



### 3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Conduct.
- 3.2. In response to the ACCC's invitation to make submissions on the application, the Australian Federation of Travel Agents (**AFTA**) made a public submission and another party made a confidential submission.
- 3.3. AFTA is the peak body for Australia's travel agents.<sup>32</sup> AFTA submits that, if the authorisation is granted, a one-year authorisation period is appropriate in circumstances where massive transformations are occurring across the travel industry with a rapidly evolving post-pandemic landscape in China. However, AFTA submits that the Applicants have not provided sufficient evidence to support the continuation of coordination on distribution strategies for passengers and agents. AFTA submits that aligning these activities appears to have the impact of limiting choices for consumers on how they shop and book travel.
- 3.4. AFTA submits that any authorisation granted should be conditional to incentivise passenger capacity increases and protect the competitive distribution of airfares. Specifically, AFTA submits that any authorisation should be subject to the following conditions:
  - Qantas and China Eastern reporting on the coordination of routes and pricing managed under the Conduct.

<sup>31</sup> Source: Australian Bureau of Statistics latest release of Overseas Arrivals and Departures, figures [here](#). Note: Statistics for July 2023 are provisional estimates.

<sup>32</sup> As part of this role, AFTA aims to stimulate, encourage and promote travel and uphold the interests of travel agents. It also administers the Australian Travel Accreditation Scheme, which accredits members for their operational standards.

- Qantas and China Eastern undertaking that they will make all fare types and schedules made possible by the Conduct available to travel agents through all distribution systems, not just the New Distribution Capability.
  - Qantas and China Eastern providing full and equal rights to travel agents for customer refunds and cancellations that occur under the Conduct, so that airlines cannot discriminate against travel agents by disabling access to the refund system for their customers.
- 3.5. AFTA submits that the above conditions are appropriate given the Conduct will allow Qantas and China Eastern to collude on distribution in a way that others in the industry cannot.
- 3.6. AFTA further submits that the benefits of previous authorisations of alliances may be overstated and have not been quantified to allow the ACCC to properly weigh consumer benefits against detriments. In this regard, AFTA submits that the Conduct may result in the following detriments:
- the Conduct would entrench market power on routes where demand is likely to grow as entry and quarantine restrictions are removed
  - the Conduct is unlikely to encourage the Applicants to accelerate additional capacity upgrades. AFTA submits that the ACCC must ensure the Conduct does not enable further increases to prices over capacity, particularly where Qantas Group has reduced its forecast 2023 international capacity
  - while the Conduct will support reinstatement and enable China Eastern to sell additional seats, this is counterbalanced by the potential for the Applicants to jointly control slots at Sydney airport to limit the ability of other airlines to increase their own supply
  - as the industry with the most reach to market and ability to cross sell Qantas and China Eastern products (irrespective of this authorisation), AFTA submits that it is unclear how the Conduct or its proposed joint marketing activities and distribution channels will significantly contribute to capacity growth
  - the Conduct may enable the Applicants to use their ability to coordinate to grow their direct distribution system to the detriment of the travel agents' ability to distribute airfares. AFTA submits the Conduct will generate less competition on the distribution of airfares noting the shift to the Applicants New Distribution Capability<sup>33</sup> channels from Global Distribution Channels.
- 3.7. In response to AFTA's submission, the Applicants submit that AFTA makes a range of contentions which are inaccurate and/or irrelevant to the Conduct. The Applicants submit that the Conduct will continue to result in real and substantial public benefits and will not result in any competitive detriment, particularly in circumstances where:

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<sup>33</sup> The New Distribution Capability is a data exchange format based on Offer and Order management processes for airlines to create and distribute relevant offers to the customer regardless of the distribution channel. It was launched by the International Air Transport Association for the development and market adoption of a new transmission standard which enhances the capability of communications between airlines and travel agents and is open to any third party to implement and use: <https://www.iata.org/en/programs/airline-distribution/retailing/ndc/>.

- the Applicants operate highly complementary networks (only a single overlap route: Sydney – Shanghai) and the application relates to a short term 12-month extension to the existing authorised conduct
  - there are a number of aggressive and effective existing competitors (some of which continue to receive government support) such as China Southern, Air China, Sichuan Airlines, Xiamen Airlines, Hainan Airlines, Beijing Capital Airlines, Tianjin Airlines, Donghai Airlines and indirect operators such as Cathay Pacific and Singapore Airlines.
- 3.8. The Applicants submit that the proposed cooperation represents the most efficient way for Qantas and China Eastern to reinstate capacity faster and more sustainably. The Applicants submit they are not artificially withholding or delaying capacity, and that their capacity plans are changing rapidly at this time as they rebuild post-pandemic in a changing and challenging global environment. The Applicants submit that they have been dealing with capacity constraints such as aircraft and crew supply shortages and other supply chain issues, none of which are related to the Conduct. The Applicants submit that the Conduct is the most effective way to rebuild, sustain and ultimately grow their combined network and capacity to the benefit of Australian consumers and businesses.
- 3.9. In response to AFTA's submission relating to the Applicants' joint control of slots at Sydney Airport, the Applicants submit that airlines do not control slots at airports, jointly or otherwise. Slots are not coordinated and are managed by each airline independently. The Applicants submit that airlines hold historic precedence to slots which are administered by Airport Coordination Australia in Sydney as per the Sydney Airport Demand Management Scheme and follow the World Airport Slot Guidelines for other Australian gateways.
- 3.10. With regards to the conditions suggested by AFTA, the Applicants submit that these conditions are not necessary or appropriate. The Applicants submit that, in addition to there being no sound basis underpinning such conditions, the conditions would also be disproportionate, administratively unworkable and unduly onerous.
- 3.11. Further, with respect to each of AFTA's proposed conditions, the Applicants submit that:
- The proposed route and price reporting condition is vague, onerous, and unnecessary. The Applicants already publish fares through each of their websites and submit pricing information to distribution systems accessible by travel agents. Additional reporting on routes and price points serves no purpose and would be unduly onerous.
  - The proposed condition allowing agents access to all fare inventories and schedules through all distribution systems is unnecessary and inappropriate, having regard to the specific conduct sought to be authorised in the Application. Agents already have access to the vast majority of fare inventories. The ACCC has not imposed conditions on any other airline authorisation under which airlines are obliged to make fare types/schedules available to travel agents.
  - No reasoning has been provided as to why the proposed condition allowing agents full and equal rights for refunds and cancellations that occur under the Conduct is warranted or appropriate in the context of the alliance. The ACCC has not imposed conditions on any other airline alliance authorisation relating to refund and cancellation rights.

- 3.12. In response to AFTA's submissions about distribution, the Applicants submit that these are inaccurate and not relevant to the Conduct. The Applicants submit that their changed commission structures, distribution standards and remuneration models are independent of the alliance and not specific to Qantas, China Eastern or the alliance.
- 3.13. Public submissions by the Applicants and interested parties are on the ACCC's [Public Register](#).

## 4. ACCC assessment

- 4.1. The Applicants have sought authorisation for conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and/or may have the purpose, effect or likely effect of substantially lessening competition within the meaning of section 45 of the Act.<sup>34</sup> Consistent with subsections 90(7) and 90(8) of the Act,<sup>35</sup> 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.

### Relevant areas of competition

- 4.2. The ACCC did not receive any submissions from the Applicants or interested parties directly commenting on the relevant areas of competition likely to be impacted by the Conduct.
- 4.3. Consistent with previous authorisations, the ACCC has identified the relevant areas of competition as:
- international air passenger transport services between Australia and China
  - international air cargo transport services (freight and mail) between Australia and China.
- 4.4. The ACCC notes that the Conduct also extends to the Applicants coordinating and potentially jointly procuring goods and services including inflight catering, lounges, logistics, corporate services, inflight goods and services, crew accommodation, labour hire, airport charges, fuel, ground handling, aircraft maintenance, inflight entertainment and aircraft components. No interested party raised any concerns about the Applicants coordinating or undertaking joint procurement in these areas in the ACCC's 2015 authorisation process, the 2021 authorisation processes, or during the ACCC's consideration of the current application for authorisation. The ACCC considers that, generally, there are a large number of other acquirers of these products and services, and many of the inputs are acquired on an international basis. Accordingly, the ACCC considers that the Applicants' joint procurement of various goods and services would be likely to have minimal, if any, impact on competition in any relevant area of competition and is therefore not likely to result in any material public detriment.

### Future with and without the Conduct

- 4.5. To identify the public benefits and detriments that are likely to result from the Conduct, in the sense that they have a causal connection to the Conduct, and to make an evaluative judgment of the likely measure of those benefits and detriments, the ACCC

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<sup>34</sup> The Applicants initially also sought authorisation in respect of s 47 of the Act, the Applicants subsequently clarified that s 47 need not be included within the scope of the ACCC's determination. This clarification is available on the [public register](#).

<sup>35</sup> See subsection 91C(7).

compares the future in which the Conduct occurs (the **future with** or **factual**), as against the future in which the Conduct does not occur (the **future(s) without**). As the Australian Competition Tribunal (the **Tribunal**) has said,

*[c]onsideration of a future without the proposal in effect assists the public benefit and anti-competitive detriment assessment in at least three ways:*

*(i) If the claimed public benefits are unlikely to exist without the proposal they can be described as benefits flowing from the proposal.*

*(ii) If the claimed public benefits exist, in part, in a future without the proposal the weight accorded to them may be reduced appropriately.*

*(iii) If, in a future without the proposal, there are public detriments which are removed or mitigated in the future with the proposal that may be considered as an element of the claimed public benefit flowing from the proposal.<sup>36</sup>*

4.6. The Applicants submit that in the future without the Conduct:

- The codeshare agreement between Qantas and China Eastern would be a more limited 'arm's length' codeshare arrangement, reducing choice, convenience, and flexibility for both carriers' customers, as was the case prior to the initial JCA being entered into in 2015.
- There is a higher risk that China Eastern would not be able to reinstate as much capacity to Australia, and such expansion would be highly unlikely to occur or would not occur as quickly.
- The carriers would not have the commercial incentive to make available tiered frequent flier benefits to customers such as lounge access and priority services. This would make it more difficult for the Applicants to rebuild Australia – China services because it reduces the attractiveness of Australia as a destination for Chinese travellers.

4.7. The ACCC considers that in the future without the Conduct:

- Qantas would likely resume operating services between Sydney and Shanghai, the timing and scale of which would take into account:
  - the recovery of passenger demand for air travel between Australia and China, and on the Sydney – Shanghai route specifically
  - China Eastern's price and service offering on the route
  - the expected profitability of its Sydney – Shanghai passenger and bellyhold cargo services (combined)
  - the availability of suitable aircraft and the profitability of deploying them on other routes.
- Qantas would not likely operate services on other routes between Australia and China over the timeframe for which authorisation is sought (31 March 2024).

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<sup>36</sup> *Re Medicines Australia Inc* [2007] ACompT 4, [119].

- The Applicants would be likely to adopt an arm's length codeshare agreement on routes between Australia and China that is similar to the arrangement they had in place prior to the 2014 Joint Coordination Agreement. That arrangement allowed:
    - Qantas to codeshare on a hard block basis<sup>37</sup> on China Eastern's Melbourne – Shanghai service
    - China Eastern to codeshare on a hard block basis on Qantas' Sydney – Shanghai service
    - Qantas to codeshare on a freesale basis<sup>38</sup> on China Eastern's services between Sydney and Beijing (via Nanjing) and between Singapore and Shanghai, as well as between Shanghai and various destinations in China
    - China Eastern to codeshare on a freesale basis on Qantas' services between Singapore and Sydney/Melbourne/Brisbane and various trans-Tasman and Australian domestic services.
  - Jetstar is unlikely to resume services between Australia and China over the timeframe for which authorisation is sought.
  - Air China is unlikely to resume direct services on the Sydney – Shanghai route during the period for which authorisation is sought.
- 4.8. The ACCC considers that a codeshare arrangement between the Applicants in the future without the Conduct would allow significant competition between them in relation to the operation and marketing of services between Australia and China. This competition is removed by the Conduct.
- 4.9. The Conduct also allows the Applicants to coordinate their price and service offering in ways that may confer benefits to consumers that are not likely in the future without the Conduct. The likely public benefits and public detriments arising from the Conduct are considered below.

## Public benefits

- 4.10. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Tribunal which has stated that in considering public benefits:

*... we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as 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.*<sup>39</sup>

- 4.11. The ACCC has considered the public benefit claims of the Applicants in the following broad categories:

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<sup>37</sup> A hard block codeshare agreement requires the operating carrier to allocate a fixed number of seats on a flight to the codeshare airline. The two airlines then compete in the marketing of seats on the flight.

<sup>38</sup> A freesale codeshare agreement allows the marketing carrier to sell an unlimited number of seats on the operating carriers providing that there is inventory available on the flight.

<sup>39</sup> 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.

- enhanced products and services
- cost savings and other efficiencies
- stimulation of tourism and trade.

### **Enhanced products and services**

4.12. The ACCC has considered whether the Conduct would be likely to result in public benefits by enhancing the Applicants' products and service offering in ways that are valued by consumers by facilitating:

- increased connectivity and convenience
- better frequent flyer program benefits
- additional frequencies and destinations.

### ***Increased connectivity and convenience***

4.13. The Applicants submit that they each have extensive domestic networks in their home countries that are more easily accessed by passengers in the future with the Conduct.<sup>40</sup> The Applicants submit that the number of destinations covered by the Applicants since the Conduct was first authorised has increased from 12 to 24 in China and 8 to 26 in Australia compared to the Applicants' more limited codeshare arrangements prior to the Conduct.<sup>41</sup>

4.14. The Applicants submit that between March 2016 and December 2019 (i.e. prior to the COVID-19 pandemic) the number of connecting itineraries from Australia to China (via Shanghai) increased from 767 per week to 965. Over the same period the number of connecting itineraries from China destinations to Australia<sup>42</sup> increased from 282 per week to 790.<sup>43</sup>

4.15. The ACCC considers that the Conduct would be likely to confer public benefits by enabling the Applicants to provide increased convenience for passengers travelling on multi-sector journeys requiring flights with both airlines (e.g. Canberra – Sydney – Shanghai – Kunming). However, the ACCC considers that the extent of these public benefits would be likely to be minimal, given the very small proportion of the Applicants' passengers who travel on itineraries that require flights with both airlines.

4.16. The ACCC also considers that the Conduct would be likely to confer public benefits by providing customers with greater schedule choice and flexibility when travelling on the only route on which the Applicants operations overlap (Sydney – Shanghai) by providing:

- greater incentive for the Applicants to spread their arrival/departure times
- opportunity for passengers holding a Qantas (China Eastern) ticket to switch to a China Eastern (Qantas) operated flight on the route, subject to seat availability, on similar terms as they would incur to switch to an alternative Qantas (China Eastern) flight.

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<sup>40</sup> The Applicants' application for revocation and substitution AA1000526 is available on the [public register](#).

<sup>41</sup> The Applicants' application for revocation and substitution AA1000526 is available on the [public register](#).

<sup>42</sup> via Sydney, Melbourne and/or Brisbane.

<sup>43</sup> The Applicants' application for revocation and substitution AA1000526 is available on the [public register](#).

4.17. The ACCC considers that the public benefits described in paragraphs 4.15 and 4.16 are likely because the Conduct enables closer and more effective coordination between the Applicants than would be likely in the future without the Conduct, including under an arm's length code share arrangement.

### ***Loyalty program benefits***

4.18. The Applicants submit that under the Extended JCA, Qantas and China Eastern allow each of their respective members to earn and redeem frequent flyer points on each of the other Applicant's services as well as receive priority check-in, priority boarding and lounge access.<sup>44</sup>

4.19. The Applicants submit that there have been significant increases in earn and redemption activity on each other's services since the ability to earn Qantas Frequent Flyer points (and status credits where applicable) on China Eastern operated services became available.<sup>45</sup>

4.20. The Applicants submit that the Conduct has delivered, and will continue to deliver, the ability for the Applicants to share product and service expertise and improve customer experiences.<sup>46</sup> The Applicants submit that customers are also able to have boarding passes for their full journey across both carriers issued in Australia and vice-versa.<sup>47</sup>

4.21. The Applicants also submit that Qantas passengers travelling to and from Shanghai have been able to benefit from access to China Eastern's improved lounge facilities.

4.22. The ACCC considers that the Conduct would be likely to enhance the value of the Applicants' loyalty programs by providing increased opportunities to earn and redeem frequent flyer points on each other's services. Given the large memberships of Qantas' and China Eastern's frequent flyer programs, the ACCC considers that reciprocal access to the Applicants' frequent flyer programs and related member services would be likely to result in public benefit compared to the future without the Conduct.

### ***Facilitating additional frequencies and destinations***

4.23. The Applicants submit that the key public benefit achieved during the requested period of authorisation will be the ability of the Conduct to support capacity reinstatement as quickly and to the maximum extent possible as demand for travel between Australia and China recovers.<sup>48</sup> They submit that:

- Since the pandemic they have been able, and will continue to, discuss and coordinate plans for the restoration of services after the lifting of entry restrictions.
- The Conduct will allow Qantas and China Eastern to maximise cross selling across their routes and allow more effective joint marketing, through dual distribution channels, which will be necessary to stimulate demand recovery.<sup>49</sup>

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<sup>44</sup> The Applicants' application for revocation and substitution AA1000526 is available on the [public register](#), [Public benefits, Continuation of Frequent Flyer Benefits].

<sup>45</sup> The Applicants' application for revocation and substitution AA1000526 is available on the [public register](#), [Public benefits, Continuation of Frequent Flyer Benefits].

<sup>46</sup> The Applicants' application for revocation and substitution AA1000526 is available on the [public register](#), [Public benefits, Improved Products and Services].

<sup>47</sup> The Applicants' application for revocation and substitution AA1000526 is available on the [public register](#), [Public benefits, Improved Products and Services].

<sup>48</sup> Applicants' submission dated 9 November 2022, Capacity Reinstatement [4.1].

<sup>49</sup> Applicants' submission dated 9 November 2022, Capacity Reinstatement [4.1].

- The Applicants' flights between Australia and China will be more likely to be successfully reinstated and sustainable if the market rebuilding process can be coordinated, using each other's inventory and distribution networks to stimulate a recovery in demand through joint sales and marketing activities.<sup>50</sup>
- They intend to strengthen the use of co-branded marketing material and continue the calendar of awareness programs to improve knowledge of the alliance among travel agents in both China and Australia (including through a series of telephone calls and onsite visits to key travel agents and corporate customers). The specific types of joint marketing activity and the development of co-branded material is subject to further discussion between the Applicants and engagement is being planned.<sup>51</sup>
- Authorisation maximises the ability of the Applicants to reinstate sustainable capacity on services between Australia and China. Without authorisation, their ability to reinstate a daily schedule will be weakened and delayed.<sup>52</sup>

4.24. The ACCC recognises that joint coordination agreements between airlines may enable airlines to aggregate passenger loads and more effectively market their services. To the extent that this allows the Applicants to achieve commercially viable loads for new services sooner than if they acted independently, such agreements could facilitate earlier commencement of additional frequencies on existing routes and to new destinations. This is a source of public benefit.

4.25. The ACCC considers that the Conduct increases the prospect of additional frequencies being added by the Applicants (relative to the future without the Conduct) by enabling the Applicants to aggregate passenger loads. The ACCC also considers that this prospect may be greater if the Applicants undertake joint marketing initiatives that stimulate additional passenger traffic.

4.26. However, the Applicants have not provided sufficient evidence for the ACCC to be satisfied that the Conduct would be likely to result in more frequencies during the period for which authorisation is sought, rather than this being a possible outcome. The ACCC invites the Applicants to provide more information, including specific examples, about:

- how the Conduct in practice is supporting the commercial sustainability of the Applicants' current and announced frequencies between Australia and China
- any specific plans or criteria the Applicants intend to apply to decide whether and when to introduce additional frequencies as passenger demand continues to grow over the period of authorisation sought
- any specific plans or criteria the Applicants intend to apply to decide whether and when to recommence services on routes that they operated on prior to the pandemic but not currently (e.g. Brisbane/Perth/Cairns to Shanghai and Sydney to Hangzhou/Kunming)
- any plans that the Applicants have to jointly market their services, including allocated budget, during the period for which authorisation is sought.

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<sup>50</sup> Applicants' submission dated 9 November 2022, Capacity Reinstatement [4.1].

<sup>51</sup> Applicants' submission dated 9 November 2022, Capacity Reinstatement [4.1].

<sup>52</sup> Applicants' submission dated 9 November 2022, Capacity Reinstatement [4.1].

- 4.27. On the Sydney – Shanghai route, the ACCC is concerned that the Conduct would be likely to reduce the Applicants’ incentives to reinstate and grow capacity compared to the future without the Conduct. This is discussed further below in paragraphs 4.514.514.51 - 4.624.62.
- 4.28. The ACCC accepts that the Conduct has the potential to result in public benefits by facilitating additional frequencies by the Applicants on routes between Australia and China other than Sydney – Shanghai (compared to the future without the Conduct). However, at this stage there is not sufficient evidence for the ACCC to be satisfied that these public benefits are likely.

### **Cost savings and other efficiencies**

- 4.29. The Applicants submit that pursuant to the Extended JCA, they wish to continue to maximise consumer benefits and operate cost effective and efficient networks by coordinating their activities and operations between Australia and mainland China as borders re-open and demand returns. However, the Applicants make no specific claim as to whether the Conduct has enabled them to realise cost savings (e.g. by avoiding duplication of fixed costs) or other efficiencies (e.g. better utilisation of fixed assets) or whether the Conduct would be likely to do so in the future.
- 4.30. The ACCC notes that the Conduct would enable the Applicants to cooperate in relation to:<sup>53</sup>
- joint airport facilities
  - joint offices for sale activities
  - harmonisation of IT systems
  - other aspects of operations, including ground handling, carriage of cargo on dedicated freighter flight services, engineering services, joint procurement and flight operations.
- 4.31. The ACCC considers it is possible that cooperation between the Applicants in these areas could result in cost savings or other efficiencies. However, the Applicants have not provided information to enable the ACCC to reach the view that such benefits are likely and material.

### **Stimulation of tourism and trade**

- 4.32. The Applicants submit that increased capacity, expansion in routes covered by the Extended JCA and improved connectivity delivered by the Conduct since 2015 has contributed to tourism growth throughout Australia.<sup>54</sup>
- 4.33. The Applicants also submit that when demand for travel between Australia and China increases, Qantas and China Eastern intend to strengthen the use of co-branded marketing material to promote and attract tourism in Australia and China. The Applicants submit that Qantas promotional activity for China services will commence soon (in Financial Year 2024) and will focus on the recommencement of the Sydney – Shanghai flight in October 2023.<sup>55</sup> The specific types of joint marketing activity and the

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<sup>53</sup> Applicants’ submission dated 10 May 2023, [1].

<sup>54</sup> The Applicants’ application for revocation and substitution AA1000526 is available on the [public register](#), [Public benefits, Tourism Recovery and Trade Benefits].

<sup>55</sup> Applicants’ submission dated 10 May 2023, [2].

development of co-branded material is subject to further discussion with China Eastern and engagement is being planned.

4.34. The Applicants also submit that China Eastern passengers can travel on China Eastern's code to a greater range of destinations across the Qantas domestic network, improving the reach of the inbound tourism market to regional Australia.<sup>56</sup> Specifically, the Applicants submit that:<sup>57</sup>

- Before the Conduct, codeshare destinations for China Eastern passengers were limited to 8 domestic Australian destinations compared to 26 as a result of the Conduct.
- In the future without the Conduct, codeshare destinations for China Eastern passengers would be limited to 2-3 domestic Australian destinations under a limited arms-length codeshare agreement.

4.35. The ACCC considers that airline alliances can stimulate tourism by:

- making Australia more accessible or convenient as a tourist destination by enhancing the alliance's product or service offerings
- allowing parties to exploit synergies through joint rather than separate tourism promotion activity.

4.36. However, the ACCC notes there are many factors that influence inbound tourism demand and expenditure, including: the 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.

4.37. The ACCC considers that the Conduct has the potential to promote greater inbound tourism to Australia by facilitating restoration of the Applicants' services, enhancing the Applicants' product and customer service offering and allowing the Applicants to engage in joint tourism promotion. However, on current information, the ACCC considers that the Conduct would not be likely to have a material impact on tourism in Australia.

4.38. With respect to trade, the ACCC considers that the key drivers of the volume and value of non-tourism trade between Australia and China are largely outside the influence of the Conduct. These 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. The ACCC considers that any net positive impact on trade as a result of the Conduct would not be likely to be material.

### **ACCC conclusion on public benefit**

4.39. The ACCC considers that the Conduct would be likely to result in minimal public benefits by enhancing the Applicants' product and service offering in terms of:

- increased convenience for passengers travelling on multi-sector flights with both airlines,

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<sup>56</sup> The Applicants' application for revocation and substitution AA1000526 is available on the [public register](#), [Public benefits, Potential Capacity Expansion].

<sup>57</sup> The Applicants' application for revocation and substitution AA1000526 is available on the [public register](#), [Public benefits, Potential Capacity Expansion].

- greater schedule choice and flexibility on overlap routes, and
  - enhanced loyalty program benefits.
- 4.40. The ACCC considers it is possible that the Conduct could result in public benefits by facilitating additional frequencies on routes other than Sydney – Shanghai (compared to the future without the Conduct). However, there is not sufficient evidence for the ACCC to be satisfied these public benefits are likely.
- 4.41. The ACCC considers that the Conduct would not be likely to result in material public benefits in the form of cost savings and other efficiencies or stimulation of tourism and trade.

## Public detriments

4.42. 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.*<sup>58</sup>

4.43. The ACCC has considered the likely public detriment from the Conduct with respect to:

- the supply of international air passenger transport services between Australia and China
- the supply of international air cargo transport services (freight and mail) between Australia and China.

4.44. The ACCC considers that the potential for public detriment is greatest in circumstances where the Conduct replaces rivalry between the Applicants with cooperation. This potential is greatest on routes which the Applicants overlap with direct flights. During the period for which authorisation is sought, the Applicants' direct services overlap on one route: Sydney – Shanghai. As noted at paragraph 4.7, the ACCC considers that in the future without the Conduct, Qantas would not likely commence operating services on any route between Australia and China, other than Sydney – Shanghai during the period of authorisation sought.

## The supply of international air passenger transport services between Australia and China

4.45. Prior to the COVID-19 pandemic (in calendar year 2019), the Applicants had a combined 34% share of total capacity (seats flown) on services between Australia and China (China Eastern had a 27% share, while Qantas had 7%), followed by China Southern (31%) and Air China (11%). Other international carriers operating direct services between Australia and China included Hainan Airlines, Xiamen Airlines, Sichuan Airlines, Beijing Capital Airlines, Tianjin Airlines and Donghai Airlines. Together they accounted for 24% of total seats flown on services between Australia and China in 2019.<sup>59</sup>

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<sup>58</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

<sup>59</sup> Bureau of Infrastructure and Transport Research Economics, [International scheduled passenger flights and seats by airline, route and city pairs, March 2023](#). This is the most current data released by BITRE as at the date of this Draft Determination.

- 4.46. As at 9 August 2023, China Southern Airlines had the largest share of scheduled weekly return seats between Australia and China (36.2%), followed by China Eastern (23.3%), Xiamen Airlines (16.6%), Air China (9.4%), Hainan Airlines (4.7%), Beijing Capital Airlines (4.6%), Sichuan Airlines (3.1%) and Tianjin Airlines (2.2%). Qantas had a 0% share at that time.<sup>60</sup> The ACCC notes these carriers' schedules are currently limited to major trunk routes between China and Sydney or Melbourne.
- 4.47. The Applicants submit that, as the relevant market/s recover, all routes between Australia and China will be characterised by intense competition. The Applicants submit that they will be constrained by other major operators, including China Southern, Air China, Sichuan Airlines, Xiamen Airlines, Hainan Airlines, Beijing Capital Airlines, Tianjin Airlines, Donghai Airlines, and indirect operators such as Cathay Pacific and Singapore Airlines.<sup>61</sup>
- 4.48. The Applicants submit that the Conduct will not generate any competitive detriment, particularly because the Applicants are seeking a short term authorisation of the Conduct until March 2024.<sup>62</sup>
- 4.49. At the date of this draft determination, no carriers other than the Applicants provide direct services on any routes between Australia and China on which the Applicants operate.
- 4.50. The ACCC considers that the potential for public detriment is greatest in circumstances where the Conduct replaces rivalry between the Applicants with cooperation. This potential is greatest on routes which the Applicants operate overlapping services. The Applicants' services overlap on one route: Sydney – Shanghai. As noted at paragraph 4.7, the ACCC considers it unlikely that Qantas would commence operating services on any route between Australia and China, other than Sydney – Shanghai, during the period of authorisation sought.

#### ***Sydney – Shanghai route – unilateral effects on competition***

- 4.51. The Sydney – Shanghai route accounted for 11% of total capacity (seats flown) operated between Australia and China in 2019.<sup>63</sup> Equivalent data for the period since March 2023 is not yet published by BITRE. The ACCC considers it is likely that the route would account for a higher share of operated capacity between Australia and China to date in 2023 as carriers generally are yet to resume services on non-trunk routes.
- 4.52. China Eastern has been the only carrier operating direct services on the route to date in 2023. Qantas has delayed recommencement of its services on the route until 29 October 2023.
- 4.53. The ACCC expects that passenger demand on the Sydney – Shanghai route will continue to grow throughout the period for which authorisation is sought. The ACCC notes that China has recently reinstated Australia's approved destination status, allowing the return of tour groups. In addition, Tourism Australia has recently made a significant investment in the promotion of Australia as a destination in China. Both developments are expected to stimulate passenger demand for travel to Australia,

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<sup>60</sup> Information derived from [Centre for Aviation](#) (9 August 2023).

<sup>61</sup> Applicants' submission dated 9 November 2022 [5.1].

<sup>62</sup> Applicants' submission dated 9 November 2022, [5.1].

<sup>63</sup> Bureau of Infrastructure and Transport Research Economics, [International scheduled passenger flights and seats by airline, route and city pairs, March 2023](#). This is the most current data released by BITRE as at the date of this Draft Determination.

including on the Sydney – Shanghai route, in the period for which authorisation is sought (31 March 2024) and beyond.

- 4.54. The ACCC is concerned that the Conduct has the potential to result in public detriment by enabling the Applicants to unilaterally raise airfares by limiting or delaying capacity growth on the Sydney – Shanghai route during the period for which authorisation is sought (to 31 March 2024). In the future without the Conduct, if Qantas were to behave this way, it would likely lose customers to China Eastern (and vice versa). The Conduct allows Qantas and China Eastern to internalise the effect of the loss of customers to each other, which could make a strategy to limit or delay capacity additions profitable for the Applicants.
- 4.55. The ACCC notes that the Conduct reduces the number of independently determined direct flight price/service offerings on the Sydney – Shanghai route from 2 to 1. The ACCC considers that the Applicants are each other’s closest competitors. While some passengers may have a preference for one airline over the other, a considerable group of passengers are likely to be prepared to fly with either based on price. Competition between Qantas and China Eastern for these customers would be entirely lost under the Conduct, given the metal neutral terms of the Joint Coordination Agreement.
- 4.56. The ACCC considers it is unlikely that any other Australian or Chinese designated airlines would enter the route to provide direct services in a timeframe and on a scale sufficient to provide a meaningful competitive constraint on the Applicants’ multiple daily services during the period of authorisation sought. The ACCC notes that Air China once operated direct services on the Sydney – Shanghai route (and the Melbourne – Shanghai route) in competition with the Applicants, albeit with a significantly smaller presence before it ceased operating direct services to Shanghai in March 2019.<sup>64</sup> Air China has since focussed its operations on Australia to Beijing routes.
- 4.57. The ACCC has considered the extent of substitutability of indirect flights for the Applicants’ direct services. Qantas and China Eastern direct flights between Sydney and Shanghai are typically between 10h 15m and 10h 40m duration each way. The ACCC notes that there are several carriers offering indirect Sydney – Shanghai services, including Cathay Pacific (via its Hong Kong hub), China Southern (via its Guangzhou hub), Xiamen Air (via its Xiamen hub), Air China (via its Beijing hub) and Singapore Airlines (via its Singapore hub). The duration of indirect services varies significantly by airline, with the shortest scheduled durations being offered by Xiamen Air (12h 55m to 15h 15m), Cathay Pacific (13h 5m to 15h 5m) and China Southern (13h 25m to 14h 10m). In terms of price, Xiamen Air, China Southern and Cathay Pacific appear to often offer comparable fares to the direct flight fares offered by the Applicants. Occasionally China Southern and Xiamen Air’s indirect Sydney – Shanghai services are cheaper than the Applicants’ direct services.
- 4.58. Indirect services accounted for 27% of passenger journeys on the Sydney – Shanghai route in 2019.<sup>65</sup> Despite offering comparable fares and the shortest duration indirect flights, Cathay Pacific, China Southern and Xiamen Air indirect services each accounted for less than an 8% share of passengers travelling on the route since the Conduct was first authorised in 2015.<sup>66</sup> The relatively low market shares of indirect carriers on the route indicates that many travellers on the route prefer direct flights.

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<sup>64</sup> See Business Traveller Update on 10 January 2019 [here](#).

<sup>65</sup> Applicants 2020 submission, Figure 14.

<sup>66</sup> Applicants 2020 submission, Figure 14.

- 4.59. The ACCC accepts that indirect Sydney – Shanghai services compete to some degree with the Applicants’ direct services. However, the relevant question for the ACCC to consider is whether the indirect service offering of other airlines is sufficient to make it unprofitable for the Applicants to raise airfares by limiting capacity growth during the period for which authorisation is sought. The ACCC considers that indirect flights are a significantly weaker competitive constraint on the Applicants than Qantas and China Eastern are on each other.
- 4.60. The ACCC has also considered the competitive constraint imposed on the Applicants by other airlines for passengers who fly on the Sydney – Shanghai route but whose ultimate origin and/or destination is a point in China or Australia other than Shanghai or Sydney. These transferring passengers are more likely to regard services provided by other airlines (requiring transit through cities or hubs other than Shanghai or Sydney) as substitutable for the Applicants’ Sydney – Shanghai service.
- 4.61. Data provided by the Applicants indicates that Sydney – Shanghai is a strong ‘point-to-point’ route, with a very low proportion of passengers who travel between Sydney and Shanghai transferring to a flight to another destination in China/Australia following arrival in Shanghai/Sydney. If the Applicants were to unilaterally raise airfares by limiting or delaying capacity growth on the Sydney – Shanghai route they would risk losing transferring passengers. However, this is unlikely to provide a strong competitive constraint on the Applicants, given the vast majority of passengers on the route travel point to point.
- 4.62. For these reasons, the ACCC considers that the Conduct would be likely to result in significant public detriment on the Sydney – Shanghai route by removing the competitive constraint that Qantas and China Eastern impose on each other. In particular, the Conduct would be likely to provide Qantas and China Eastern with an increased ability and incentive to raise airfares by limiting or delaying capacity growth on this route during the period for which authorisation is sought.

#### ***Other routes between Australia and China***

- 4.63. As noted in paragraphs 4.6 and 4.7, the ACCC considers that Qantas would not likely operate services between Australia and China other than on the Sydney – Shanghai route prior to 31 March 2024 in the future without the Conduct. Qantas would likely codeshare on China Eastern’s services as it did prior to 2015, including on a hard block basis on routes such as Melbourne-Shanghai.
- 4.64. Under a hard block codeshare, the marketing carrier has a block of seats to sell on the operating carrier’s flight. This means that the operating carrier and the codeshare partner compete against each other to market and sell their allocated inventories on the relevant flights. Hard block arrangements can potentially be more competitive than freesale codeshare arrangements because their fixed cost characteristics can provide strong incentives for price competition.
- 4.65. The ACCC considers that the Conduct would be likely to reduce competition between the Applicants on routes such as the Melbourne – Shanghai route by removing their rivalry in the marketing and sale of hard block allocated seats on China Eastern operated services. However, having regard to confidential information provided by the Applicants in the past about their hard block codeshare arrangement prior to 2015, the ACCC does not consider that this reduction in competition is material.
- 4.66. Accordingly, the ACCC considers that the Conduct would be unlikely to result in material public detriment through its effect on competition on air passenger transport services on routes between Australia and China other than the Sydney – Shanghai route.

### ***Coordinated effects on competition***

- 4.67. Airline alliances can also lessen competition through coordinated effects. Coordinated effects arise when the proposed conduct assists all airlines operating in a market to tacitly or explicitly coordinate their pricing, output or related commercial decisions. It involves competing airlines recognising and accommodating their mutual interests by not competing as vigorously as they otherwise would. This can happen if the proposed conduct alters market conditions to make coordination more likely.
- 4.68. The ACCC considers that the Conduct does not materially increase the risk of coordinated conduct between the Applicants and other airlines operating between Australia and China. The ACCC notes that the Conduct does not affect the number of independent offerings on most routes between Australia and China. On the Sydney – Shanghai route, where the Conduct reduces the number of independent direct service offerings from 2 to one, the ACCC considers it is unlikely that any other Australian or Chinese designated airlines would enter the route within the period for which authorisation is sought.
- 4.69. The ACCC therefore does not consider that the Conduct would be likely to result in a public detriment by materially increasing the likelihood of coordinated effects on passenger services between Australia and China.

### **The supply of international air cargo transport services (freight and mail) between Australia and China**

- 4.70. Freight and mail are carried in the holds of aircraft used for passenger services as well as by dedicated freighters between Australia and China.
- 4.71. The Applicants submit that the market/s for freight services are characterised by intense competition.<sup>67</sup> 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.<sup>68</sup> The Applicants submit that they have been, and will continue to be, constrained by other rivals operating direct and indirect passenger services, with low barriers to entry and expansion.<sup>69</sup>
- 4.72. No interested parties made submissions in relation to the impact of the Conduct on the supply of international air cargo transport services.
- 4.73. The ACCC considers that the relevant market for the supply of international air cargo transport services (freight and mail) between Australia and China includes supply by dedicated air freighters as well as aircraft used for passenger services between Australia and China. The ACCC considers that generally cargo transport customers are more likely than passengers to regard indirect services as a reasonably close substitute for direct services, since the inconvenience of a one or multi stop journey is generally less of an issue for non-perishable cargo than it is for passengers.
- 4.74. The ACCC considers that there are numerous other passenger airlines and dedicated air freighters that compete with the Applicants to supply air cargo services between Australia and China.
- 4.75. BITRE data indicates that the Applicants accounted for 27.54% of direct air freight between Australia and China (21.84% China Eastern, 5.7% Qantas) in calendar year

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<sup>67</sup> Applicants' submission dated 9 November 2022, [5.1]

<sup>68</sup> Applicants' submission dated 9 November 2022, [5.1]

<sup>69</sup> Applicants' submission dated 9 November 2022, [5.1]

2019 (pre-pandemic). China Southern (29.75%) accounted for the largest share, followed by Federal Express Corporation (9.11%), Air China (10.21%) and Xiamen Airlines (8.07%). Other suppliers of air cargo services between Australia and China in 2019 included Hainan Airlines, United Parcel Service, Polar Air Cargo, Sichuan Airlines, Beijing Capital Airlines and Tianjin Airlines.<sup>70</sup> These statistics do not include passenger airlines operating indirect Australia – China freight services via points outside China and Australia.

4.76. In view of the competitive constraint on the Applicants that is likely provided by other airlines using aircraft used for passenger services and dedicated air freighters operating between Australia and China, the ACCC considers that the Conduct is unlikely to raise competition concerns in relation to international air cargo transport services.

### **ACCC conclusion on public detriment**

4.77. The ACCC considers that the Conduct would be likely to result in significant public detriment by enhancing the ability and incentive for the Applicants to unilaterally raise prices by limiting or delaying growth in capacity on the Sydney – Shanghai route on which the Applicants both operate.

4.78. The ACCC considers that the Conduct is unlikely to result in any material public detriment in the form of a reduction of competition for the supply of air passenger services on other routes between Australia and China or for the supply of international air cargo transport services between Australia and China.

### **Balance of public benefit and detriment**

4.79. The ACCC's assessment of whether it is satisfied that the likely public benefits of the Conduct would outweigh the likely public detriments requires a balancing exercise.<sup>71</sup>

4.80. The ACCC considers that the Conduct would be likely to result in minimal public benefits during the period of authorisation by enhancing the Applicants product and service offering through:

- increased convenience for the small proportion of passengers travelling on multi-sector flights with both airlines,
- greater schedule choice and flexibility on overlap routes, and
- enhanced loyalty program benefits.

4.81. The ACCC considers that the Conduct has the potential to result in public benefits by facilitating additional frequencies by the Applicants on routes between Australia and China other than Sydney – Shanghai (compared to the future without the Conduct). However, at this stage there is not sufficient evidence for the ACCC to be satisfied that these public benefits are likely. Accordingly, they have not been taken into account in the weighing of public benefits and detriments.

4.82. The ACCC considers that the Conduct would be likely to result in a significant public detriment by enhancing the ability and incentive for the Applicants to unilaterally raise

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<sup>70</sup> Bureau of Infrastructure and Transport Research Economics, [Airline by country of port data—passengers, freight and mail—2009 to March 2023](#). This is the most current data released by BITRE as at the date of this Draft Determination.

<sup>71</sup> *Australian Competition and Consumer Commission v Australian Competition Tribunal* (2017) 254 FCR 341, at [7] (Besanko, Perram and Robertson JJ).

prices (airfares) by limiting or delaying growth in capacity on the Sydney – Shanghai route, where the Applicants both operate.

- 4.83. On balance, for the reasons outlined in this draft determination, the ACCC considers that at the time of this Draft Determination, it cannot be satisfied that the Conduct would be likely to result in a public benefit that would outweigh any likely detriment to the public from the Conduct.

## Interim authorisation

- 4.84. The interim authorisation remains in place while the ACCC's consideration of the substantive application for authorisation continues.
- 4.85. As set out in paragraph 4.26, the ACCC has invited the Applicants to provide more information, including specific examples, about how the Conduct would be likely to result in public benefits by facilitating additional frequencies and destinations on routes between Australia and China. To the extent that this information may impact the balance of the likely public benefits and detriments, the ACCC considers it is appropriate for the interim authorisation to remain in place to provide the Applicants an opportunity to make submissions on the draft determination and/or request a pre decision conference before the ACCC makes its final determination.
- 4.86. The ACCC also invites the Applicants to make any submissions as to the need for, the extent of and the length of any transitional arrangements that the ACCC should consider before making any decision as to whether interim authorisation should be revoked or not.

## 5. Draft determination

### The application

- 5.1. On 11 November 2022, the Applicants lodged an application to revoke authorisation AA1000526 and substitute authorisation AA1000624 for the one revoked. This application for authorisation was made under subsection 91C(1) of the Act.
- 5.2. The Applicants seek authorisation for the Conduct set out at paragraphs 1.201.201.20 - 1.231.22.
- 5.3. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

### The authorisation test

- 5.4. 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 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 Conduct.
- 5.5. For the reasons outlined in this draft determination, the ACCC is not satisfied, in all the circumstances, that the 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 Conduct, including any lessening of competition.
- 5.6. Accordingly, the ACCC proposes to deny authorisation.

## 6. Next steps

- 6.1. The ACCC now invites submissions in response to this draft determination by 6 October 2023. In addition, consistent with section 90A of the Act, the Applicants or an interested party may request that the ACCC hold a conference to discuss the draft determination.