



**Qantas Airways Limited and  
China Eastern Airlines Corporation Limited –  
Application for revocation of AA1000526 and the substitution of  
authorisation AA1000624  
Interim authorisation decision  
30 March 2023**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisation AA1000526 and grant interim authorisation in substitution for the authorisation suspended. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.
2. Interim authorisation enables Qantas Airways Limited (**Qantas**) and China Eastern Airlines Corporation Limited (**China Eastern**) and their related bodies corporate<sup>1</sup> (together, the **Applicants**) to continue to coordinate on their operations between Australia and mainland China pursuant to their extended Joint Coordination Agreement (**Extended JCA**) and its associated agreements, while the ACCC's assessment of the substantive application for re-authorisation continues.
3. Interim authorisation is granted in respect of Division 1 of Part IV of the *Competition and Consumer Act 2010* (Cth) (the **Act**) and section 45 of the Act.
4. Interim authorisation commences immediately and remains in place until the date the ACCC's final determination comes into effect, the application for authorisation is revoked, or until it is revoked.

**The application for authorisation**

5. On 9 November 2022, the Applicants lodged an application for revocation of authorisation AA1000526 and substitution of authorisation AA1000624 for the one revoked (referred to as '**re-authorisation**').
6. The Applicants seek re-authorisation for 12 months to coordinate 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

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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.

- 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
- easing the planning of itineraries through the provision of better information to agents.

(the **Conduct**).

7. The Conduct includes coordination between Qantas, China Eastern and their related bodies corporate.

### **The 2015 and 2021 authorisations**

8. The Conduct has previously been authorised by the ACCC in 2015 and 2021.
9. In respect of the 2015 authorisations ([A91470](#) & [A91471](#)) the ACCC considered the Conduct would likely result in public benefits by:
  - providing passengers on Qantas flights between Sydney and Shanghai with improved connectivity and convenience when transferring to a China Eastern flight for onward travel and vice versa
  - enabling better scheduling of complementary services by the Applicants, thereby facilitating greater connectivity between their services
  - facilitating, to some extent, the addition of new frequencies and destinations by the Applicants, or the addition of these frequencies and destinations sooner than would otherwise be the case
  - potentially enhancing the attractiveness of the Applicants' loyalty programs
  - providing cost savings resulting from terminal co-location in Shanghai which would allow for more efficient management of transiting passengers and streamlining of processes for handling freight being transported to Shanghai by Qantas and onwards by China Eastern.
10. However, the ACCC was concerned that the competitive constraint Qantas and China Eastern imposed on each other on routes between Australia and Shanghai was likely to be lost with the proposed alliance, particularly on the Sydney-Shanghai route where they competed to provide direct services. The ACCC was concerned that this would potentially provide Qantas and China Eastern with the ability and incentive to unilaterally reduce capacity or limit growth in capacity to increase prices.
11. To mitigate concerns about the public detriment flowing from the lessening of competition, the 2015 authorisations were granted with conditions requiring the Applicants to:
  - maintain at least an aggregate 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.
12. The Applicants complied with the conditions of the 2015 authorisations up until the Northern Winter of 2019. Due to exceptional circumstances related to the outbreak of COVID-19 and subsequent travel restrictions to China, the Applicants applied to vary the conditions and, later waive them all together. The ACCC decided to vary and waive the conditions as requested.<sup>2</sup>
  13. In respect of the 2021 authorisation ([AA1000526](#)), the ACCC considered that the disruption to the aviation industry resulting from the COVID-19 pandemic was likely to be longer than was anticipated, meaning travel opportunities between Australia and China would take longer to return to their pre-pandemic state.<sup>3</sup>
  14. In the current application for re-authorisation, the Applicants submit that the terms of the Extended JCA have not changed materially other than the extension of its term for 12 months until 31 March 2024.

### The authorisation process

15. If granted, an authorisation provides businesses with protection from legal action under the competition provisions in Part IV of the Act. The ACCC has a discretion to grant authorisation, 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) and s 90(8) of the Act (the **authorisation test**)). The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

### Interim authorisation

16. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. Granting interim authorisation prior to the expiry of the current authorisation will have the effect of suspending its operation and substituting it with the interim authorisation such that the ACCC can consider the application for re-authorisation.
17. The Applicants have requested interim authorisation because authorisation AA1000526 will expire on 31 March 2023 and the ACCC will not have made a final determination about the application for re-authorisation before the existing authorisation expires.
18. The Applicants requested interim authorisation on the basis that:
  - Interim authorisation is appropriate and reasonable in the current uncertain market circumstances.
  - The Conduct is inherently pro-competitive and will enable the immediate continuation of significant, substantiated public benefits at a time of great challenge to consumers seeking to travel, and Australian businesses seeking to import or export, between Australia and China.
  - Allowing commercial coordination including joint selling to continue seamlessly as borders re-open will ensure that services, once reinstated, have the best prospect of success. In turn, this will expedite the public benefits that will flow in the medium-long term once services are fully operational.

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<sup>2</sup> See ACCC's Statement of Reasons – Variation to conditions of authorisation on 25 March 2020 and 4 September 2020 on the ACCC's public register [here](#).

<sup>3</sup> See ACCC's determination granting re-authorisation AA1000526 [here](#).

- Interim authorisation will not give rise to permanent changes to the relevant market dynamics or cause any detriment to consumers or others given that the Applicants are already coordinating (to the extent operations are on foot), pursuant to the existing authorisation.
- There is typically at least a six month lead time on selling passenger services, meaning that close and continued collaboration between the Applicants is critical in order to make the reinstated services competitive when borders re-open.
- The ability to conduct a coordinated strategic campaign in both countries is the only way to enable a viable re-launch of the reinstated services after the COVID-19 Pandemic. Planning for and selling these services post March 2023 now, without the support and involvement of the other carrier, would be problematic commercially and confusing for consumers and travel agents. The ability to conduct a coordinated strategic campaign in both countries is the only way to enable a viable re-launch of the reinstated services after the COVID-19 Pandemic. Planning for and selling these services post March 2023 now, without the support and involvement of the other carrier, would be problematic commercially and confusing for consumers and travel agents.
- Interim authorisation will not cause any detriment to consumers given that the Applicants are already coordinating operations pursuant to existing authorisations. The Applicants would commit to ensuring that to the extent ticketed passenger fares and any frequent flyer benefits and entitlements are offered in respect of the period after March 2023, they would be honoured, and booked travel re-accommodated (if possible), in the event that final authorisation is not granted.

## **Consultation**

19. The ACCC invited submissions from a range of potentially interested parties including competitors, industry associations and regulatory bodies. The ACCC received 2 public submissions and a confidential submission on the application for re-authorisation but did not receive any submissions directly addressing the request for interim authorisation. The ACCC will consider submissions received in response to the application for re-authorisation in preparing its draft determination.
20. Further information in relation to the application for re-authorisation and request for interim authorisation, including any public submissions received by the ACCC as this matter progresses, are available on the ACCC's [public register](#).

## **Reasons for decision**

21. The ACCC has decided to grant interim authorisation under section 91(2) of the Act.
22. Interim authorisation is granted on the same terms as the existing authorisation, AA1000526.
23. The ACCC has decided to grant interim authorisation for the following reasons:
  - The existing authorisation, AA1000526, is due to expire on 31 March 2023. Interim authorisation will enable the ACCC to give due consideration to the application for re-authorisation in circumstances where the ACCC's final determination in this matter is unlikely to come into effect before the existing authorisation expires.
  - It is unlikely that granting interim authorisation would have any significant impact on the status quo. Noting that the Applicants are authorised to engage in the Conduct until 31 March 2023, and the application for re-authorisation does not expand ways in which Qantas and China Eastern can coordinate, interim authorisation will allow the

Applicants to continue with the Conduct while the ACCC considers the application for re-authorisation.

- There is some urgency for the Applicants to have certainty that they will be able to continue planning how they would cooperate, and to then coordinate, their operations beyond the date of the existing authorisation's expiry. Interim authorisation would allow the Applicants to coordinate in relation to flights that may operate beyond 31 March 2023.
- If interim authorisation is granted but the ACCC does not ultimately grant the application for re-authorisation, then Qantas and China Eastern would have to unwind any business activities that they had planned in reliance on the interim authorisation. The ACCC considers that this task may be significant, but notes that if interim authorisation is not granted, then the Applicants would have to undertake the same exercise of unwinding coordinated business plans by an earlier date. If interim authorisation is not granted, the Applicants' ability to plan for, and to coordinate their operations, post 31 March 2023 is likely to be disrupted, impacting both them and their customers.