

Record of oral submission to the Australian Competition and Consumer Commission (ACCC)

AA1000625 Application for re-authorisation by Qantas Airways Ltd & Emirates

Submission: Australian Federation of Travel Agents

Date of submission: 13 February 2023

Background to AFTA's written submission

1. The Australian Federation of Travel Agents (**AFTA**) is the peak body for the entire travel intermediary sector. The travel intermediary sector is made up of traditional retail travel agents, tour operators, wholesalers, consolidators and online travel agents and those intermediaries. The submission AFTA has put forward is on behalf of the AFTA membership.
2. AFTA has taken a neutral position as to Qantas' and Emirates' application for re-authorisation as the application did not contain sufficient information in the areas we submitted on. However, AFTA opposes the 10-year authorisation period requested by the parties and submits that if re-authorised, 5 years should be the absolute maximum period of authorisation. AFTA submits this is appropriate considering the changes to the industry in the last 12 months, and more generally over the past 3 years.

Submissions on the future with and without authorisation

3. AFTA notes that there are currently a number of authorisations in the market allowing airlines to coordinate schedules, pricing and marketing activities. AFTA has found that the claimed public benefits of allowing airlines to add routes may not actually arise, as those benefits could happen without authorisation. AFTA queries how many airlines would actually pull out of those routes or activities claimed as public benefits if market forces were allowed to play as per normal competition law.
4. Specifically, AFTA does not believe that Emirates would stop flying to Dubai and stop flying to other destinations that Qantas did not if the members of AFTA were allowed to compete fairly and equally for the overall sale of air services. AFTA does not believe that the airlines need to be able to share every element of pricing to fly on all of their routes.
5. In relation to what AFTA considers would happen without the Proposed Conduct, AFTA says it is difficult to establish what "normal behaviour" is because of the large number of existing authorisations. However, at the moment, the regulatory environment is very one-sided. AFTA members can't discuss any of the commercial arrangements that they wish to have with an airline, or a group of airlines, because ultimately, they are competitors. But airlines can, either through individual alliances or authorisations. AFTA cannot bring its commercial interests, or consumer interests, to drive changes in scheduling, pricing and change the overall demand levels in the way that airlines can.
6. In AFTA's view there is a large concentration of power within one or two operators, and the public nature in which announcements are made. AFTA's view is that it is easy for other players to replicate the activity which due to their market share becomes the normal operation of the market.

The regulatory environment

7. AFTA submits that it is paramount to look at the other regulatory restrictions that apply. AFTA notes that there may be circumstances where a supplier is willing to increase supply into the market, but because of how the other parts of the aviation industry are regulated (whether that be slot movements or bilateral caps), there is effectively a double handbrake. AFTA states that in these circumstances, and where AFTA can't create any

level of competitive tension that they would in a normal marketplace, it is very hard to generate change in supplier behaviour for the benefit of our customers. AFTA submits this is why the market shares of the individual carriers didn't really vary significantly prior to COVID, because there are multiple regulatory barriers to entry for new suppliers into the market.

Public benefits

8. AFTA submits that some of the key public benefits included in Qantas' & Emirates' submission such as lounge access are overstated. AFTA submits that many of the public benefits claimed could be obtained through a regular codeshare without the level of coordination requested including on pricing, commissions and payments to travel agents, distribution services and access to fares.
9. With regards to pricing and the consumer detriment, AFTA submits that when examining the data detailed in the application this authorisation would provide the applicants combined market share of approximately 52 percent to the UK. This would allow the applicants to set prices amongst themselves and have strong coordination around distribution strategies which can be easily replicated. AFTA submits that the data provided by Qantas and Emirates demonstrates they control a significant portion of the market. In allowing this the areas identified to operate together will create a different outcome for consumers based on the natural competitive forces that would be in market if they were operating independently. AFTA submits that this, combined with high consumer demand and reduced levels of capacity, means that competitive forces that are very different to pre-COVID. As such, AFTA submits it is unlikely there will be much consumer benefit on the pricing front.
10. AFTA further submits that authorising two large players with such a large market share gives outcomes to consumers that are not necessarily as strong as they could be. AFTA submits that prices are currently set far above what any inflationary measures might lead them to be. AFTA submits if Qantas and Emirates are allowed to coordinate on this sort of practice, it does not drive them to create better prices and increase capacity when they are making so much profit out of the way they are currently structured.

Distribution channels

11. AFTA submits since the last authorisation, there has been significant change to the travel industry's distribution systems, governing the way that AFTA's members are able to sell as agents on behalf of airlines, the way that remuneration works between airlines and agents, and the impacts of COVID on all fronts, including pricing, coordination and AFTA's operation in this space.
12. AFTA also submits there is a cumulative effect of what they are seeing for consumers. With the introduction of new distribution channels, AFTA are seeing that airlines such as Qantas are only putting certain fare types, certain seats, into the traditional distribution systems (which enables bookings for airfares, hotels and car hire) which is typically the cheapest for agents and therefore customers. AFTA submits that if a travel intermediary elects to get that inventory for the traveller from a channel that is not the airline's preferred path, the airline penalises the travel intermediary financially for using a system they prefer less through increased charges. AFTA submits that the general narrative from the airlines is that the cost is up for travel intermediaries to pass on to the travellers.
13. AFTA submits that restrictions and limited loading of airfare types across all distribution channels make it harder for agents on behalf of consumers to compare and contrast value for money. AFTA submits that 70% of all international air travel are booked through travel agents and one of the reasons why Australia has such a high rate of agent bookings when compared to the rest of the world is the complexity of travel for

Australians who travel globally. AFTA submits that by making that harder and increasing the price point, it's harder for agents to provide that end consumer benefit.

Submissions on AFTA's proposed conditions on authorisation

14. One of the proposed conditions is essentially aimed at addressing the issues during the COVID-19 pandemic regarding refunds that had an ultimate consumer detriment. AFTA wants a condition ensuring that, as agents, they can't be effectively "turned off" from securing refunds for consumers. AFTA has spoken publicly about the current difficulty agents have experienced in administering refunds . The refund process is actually very straightforward when agents are allowed to use the automated systems that are set up to manage that.
15. AFTA submits that there should be full transparency regarding how the authorisations are being utilised. In particular, AFTA notes that airlines that didn't have authorisations (or authorisations at the same or similar levels) were able to ramp up supply faster than those airlines that had the authorisations and AFTA submits this has an impact on increasing the overall price for consumers. Therefore, having some transparency in how those authorisations are being used, and the market settings, will also help to determine going forward the end impact that authorisation has on the price points. AFTA notes that removal of reporting conditions was requested by the Applicants in the re-authorisation application. AFTA believes the Applicants should continue to have a reporting obligation (including on pricing), but not just on the Sydney-Christchurch route – the Applicants should report on any route where they control significant market power.
16. The condition that AFTA has proposed in relation to reporting of pricing is on the basis that the ACCC authorises the conduct, but there is a threshold question before granting authorisation. That is whether there is consumer detriment regarding the coordination around pricing (i.e. pricing of tickets, and pricing for distribution services and agent commissions). AFTA submits that, ultimately, less alliances are better in this new landscape, on all fronts in the supply chain.