



Australian Government

International Air Services Commission

Ms Megan Morris
Acting Head
International Affairs
Qantas Airways Limited
(sent via email)

Dear Ms Morris *Megan*

I refer to the Qantas application of 8 January 2019 concerning its proposal to vary Determination [2015] IASC 115 (as varied) to permit the use of the capacity for the provision of code share services with Cathay Pacific on the Hong Kong route. The proposal is for Cathay Pacific to offer code share services on flights operated by Qantas on the Hong Kong route from 31 March 2019.

Transfer application

Qantas' application is a transfer application as defined in section 4 of the *International Air Services Commission Act 1992* (IASC Act), as follows:

transfer application means an application, by an Australian carrier to whom a determination allocates capacity, for one or both of the following: (a) a variation of the determination in a way that allocates, or has the effect of allocating, that capacity, to another Australian carrier; (b) a variation of the determination that varies, or has the effect of varying, one or more conditions of a kind referred to in paragraph 15(2)(d), (e), or (f).

Qantas' application is a variation of the determination of a kind referred to in paragraph 15(2)(e) of the IASC Act -- that is "a condition stating the extent (if any) any such carrier may use that capacity by providing joint international air services¹ with another Australian carrier or any other person".

In light of this, the Commission's decision will be made pursuant to section 25 of the IASC Act ('Decisions on transfer applications'). Subsection 25(2) provides that "[t]he Commission must not make a decision varying the determination in a way that varies, or has the effect of varying, an allocation of capacity if the Commission is satisfied that the allocation, as so varied, would not be of benefit to the public". In assessing the benefit to the public of a proposed variation, section 26 requires the Commission to apply the criteria set out for that purpose in the Minister's Policy Statement.

Paragraph 18 of the Minister's Policy Statement (2018) provides for the criteria in assessing public benefit for transfer applications. Paragraph 18 provides, in part, that the Commission is to have regard to the reasonable capability criterion in paragraph 8 of the Policy Statement and may have regard to any of the additional criteria that it

¹ Section 4 defines 'joint international air services' to include, but not limited to, the provision of international air services by an Australian carrier involving code sharing, blocked space arrangements, joint pricing, revenue and cost sharing, revenue and cost pooling, or the sale of capacity to another airline.

considers relevant in paragraph 9. Paragraph 9 refers to competition, tourism and trade criteria, information from other government agencies and any other matter or consideration that the Commission considers to be relevant.

Paragraph 9 criteria

The Commission invites Qantas to address the competition, tourism and trade criteria in paragraph 9 of the Minister's Policy Statement.

Qantas is requested to provide details on how its proposed code share with Cathay Pacific would achieve the object of the IASC Act² of enhancing the welfare of Australians by promoting economic efficiency through competition in the provision of international air services, resulting in:

- (a) increased responsiveness by airlines to the needs of consumers, including an increased range of choices and benefits;
- (b) growth in Australian tourism and trade; and
- (c) the maintenance of Australian carriers capable of competing effectively with airlines of foreign countries.

Additional information

In the interest of transparency to enable stakeholders to comment substantively on the Qantas application and comply with the requirements of the IASC Act to invite submissions about the review of a determination, Qantas is requested to specify the city-pair sectors where Qantas proposes to code share with Cathay Pacific on the Hong Kong route.

Additionally, Qantas is requested to provide the following data to the Commission:

- passenger numbers and market share on each of the city-pair sectors it directly operates (Brisbane-Hong Kong; Melbourne-Hong Kong; Sydney-Hong Kong);
- Qantas' yield and load factors on each of the city pairs it directly operates.

Publication of Qantas' response

Please note that the Commission will publish the Qantas' response. If you are providing commercially sensitive information, you may wish to provide two responses to the Commission: one version suitable for publication and the other version to be treated on a confidential basis. However, the Commission reserves the right to determine if the information provided on a confidential basis has to be made public in the interest of transparency and due process to enable stakeholders to comment substantively. Qantas will be consulted should this issue arise before releasing any such information publicly.

The Commission would appreciate your response by **mid-day 8 February 2019**.

Comments from the ACCC

The Australian Competition and Consumer Commission (ACCC) informed the Commission it would provide a submission on the Qantas application. However, in its letter of 23 January 2019, the ACCC indicated that it would be able to provide substantive comments once Qantas has given further information concerning the

² Section 3, IASC Act as reinforced by the Minister's Policy Statement in subsection 6(2) that "[t]he Commission is to perform its functions in a way that will achieve the object of the Act (that is, to promote economic efficiency through competition in the provision of international air services) by fostering, encouraging and supporting competition in the provision of international air services by Australian carriers".

application and that access to the code share agreement between Qantas and Cathay Pacific would assist the ACCC in formulating their comments. Please let us know if you have any objection to the Commission sharing a copy of the code share agreement with the ACCC and the reasons for your objection, if any.

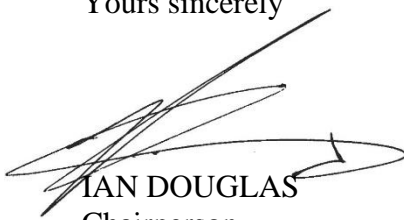
Submission from Virgin Australia

As you are aware, Virgin Australia has made a submission on 22 January 2019 on the Qantas application expressing significant concerns on the proposed code sharing between Qantas and Cathay Pacific on the Hong Kong route.

In the interest of due process, the Commission invites Qantas to respond to the concerns raised by Virgin Australia in its letter of 22 January 2019. It would be appreciated if Qantas could submit its response to the Virgin Australia submission by **mid-day 8 February 2019**. Again, consistent with the Commission's policy of transparency, the Qantas response on the Virgin Australia submission will be published.

Should you wish to discuss this request, please feel free to contact Ms Marlene Tucker on (02) 6267 1107 or by email at Marlene.Tucker@infrastructure.gov.au.

Yours sincerely



IAN DOUGLAS
Chairperson

25 January 2019