



## Australian Government

### International Air Services Commission

#### DECISION

**Decision:** [2007] IASC 212  
**Variation of:** [2004] IASC 104  
**The Route:** India  
**The Applicant:** Qantas Airways Limited (Qantas)  
(ACN 009 661 901)  
**Public Register:** IASC/APP/200720

#### 1 The application

1.1 On 22 October 2007, Qantas applied for a variation to Determination [2004] IASC 104, which allocates 2,100 seats of capacity to Qantas on the India route, to permit Jet Airways to code share on Qantas' three weekly services between Sydney and Mumbai. Qantas and Jet Airways are already authorised by the Commission to code share with each other. Jet Airways code shares on a number of Qantas services between Australia and Singapore, while Qantas code shares on connecting Jet Airways flights between Singapore and Mumbai and between Singapore and Delhi.

1.2 The expanded code share arrangements between the two carriers will operate on a free-sale basis and relate to passenger carriage only. The services will be operated pursuant to the existing code share agreement between the carriers, as amended. A signed copy of the amended agreement will be provided to the Commission prior to the code share services commencing.

1.3 The Commission published a notice on 26 October 2007, inviting submissions about the application. No submissions were received. All material supplied by the applicant is filed on the Register of Public Documents.

#### 2 Provisions of relevant air services arrangements

2.1 Under the Australia – India air services arrangements, the designated airlines of either party may code share on services operated by the designated airlines of the other party with unlimited capacity and frequency. Capacity is not counted against the entitlements of the marketing carrier.

### **3 Delegate's consideration**

3.1 In accordance with section 27AB of the Act and regulation 3A of the *International Air Services Commission Amendment Regulations 2003 (No.1)*, the delegate of the Commission considers the Qantas application.

3.2 When considering applications to vary determinations, the delegate of the Commission must decide whether the determinations, as varied, would be of benefit to the public. Under section 6.3 of the Minister's policy statement, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity and no submission is received about the application, only the criteria in paragraph 4 of the policy statement are applicable. Under paragraph 4, the use of entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public.

3.3 Under Section 15(2)(e) of the Act, the Commission must include a condition in determinations stating the extent to which the carrier may use that capacity in joint services with another carrier. Qantas will be amending its existing code share agreement with Jet Airways dated 6 September 2006 to include the additional services. The delegate of the Commission will authorise the use of capacity in joint services with Jet Airways providing that the amended agreement is received and approved by the Commission prior to services commencing.

3.4 The delegate, on behalf of the Commission, will vary the determination as requested by Qantas.

### **4 Decision [2007] IASC 212**

4.1 In accordance with section 24 of the Act, the delegate of the Commission varies Determination [2004] IASC 104 by:

*adding* the following conditions:

- “the capacity may be used by Qantas to provide services jointly with Jet Airways in accordance with:
  - the code share agreement dated 6 September 2006, as amended, providing that the amended agreement is received and approved by the Commission prior to services commencing; or
  - any subsequent code share agreement between Qantas and Jet Airways for operations on the Australia – India route with the prior approval of the Commission;
- under any code share agreement with Jet Airways:

- Qantas must price and sell its services on the route independently of Jet Airways
- Qantas must not share or pool revenues on the route with Jet Airways;
- to the extent that the capacity is used to provide joint services on the route, Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of the booking;”

Dated: 7 November 2007

Michael Bird  
Executive Director  
Delegate of the IASC Commissioners