



Australian Government
International Air Services Commission

DECISION

Decision:	[2013] IASC 224
Variation of:	[2009] IASC 123, [2011] IASC 116 and [2011] IASC 117
The Route:	Hong Kong
The Applicant:	Qantas Airways Ltd (ACN 009 661 901) (Qantas)
Public Register File:	IASC/APP/201324

The Commission's delegate varies Determinations [2009] IASC 123, [2011] IASC 116 and [2011] IASC 117 to permit Jet Airways to code share on Qantas' services on the Hong Kong route.

1 The applications

1.1 On 19 August 2013, Qantas applied to the Commission to vary Determinations [2009] IASC 123, [2011] IASC 116 and [2011] IASC 117, which together allocate a total of 25 frequencies on the Hong Kong route, to enable Jet Airways to code share on Qantas operated services between Australia and Hong Kong. These determinations authorise Qantas to provide joint services with a wholly-owned subsidiary of Qantas and with Air France. The determinations were subsequently varied to permit Qantas to code share with Finnair on the route.

1.2 The Commission published a notice on 19 August 2013, in accordance with section 22 of the *International Air Services Commission Act 1992* (the Act), inviting submissions about the application. No submissions were received.

1.3 All material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

2 Delegate's consideration

2.1 In accordance with section 27AB of the Act and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission may consider Qantas' applications. (For purposes of this determination, all references to the Commission include the delegate of the Commission).

2.2 Qantas' application seeks to vary the Determinations to include a condition of a kind referred to in paragraph 15(2)(e) of the Act. In view of this, the applications are transfer applications as so defined in subsection 4(1) of the Act and have been assessed in accordance with section 25.

2.3 Subsection 25(1) provides that the Commission must make a decision varying the determination in a way that gives effect to the variation requested, subject to subsection

25(2). Subsection 25(2) states that the 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.

2.4 Under section 26 of the Act, in assessing the benefit to the public of a variation of an allocation of capacity, the Commission is required to apply the criteria set out in any policy statement issued by the Minister under section 11.

2.5 Paragraph 6.3 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement) provides that, subject to paragraph 6.4, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity, including to use the Australian capacity in a code share arrangement with a foreign carrier, and no submission is received about the application, only the criteria in paragraph 4 of the Policy Statement are applicable.

2.6 Paragraph 6.4 provides, in part, that the Commission may apply the criteria in paragraph 5 in the circumstances set out in paragraph 3.6 of the Policy Statement.

2.7 Under paragraph 3.6, where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise applications for use of capacity to code share. However, if the Commission has serious concerns that a code share application (or other joint service proposal) may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission (the ACCC).

2.8 The proposed code share will enable Jet Airways to put its code on Qantas-operated services between Australia and Hong Kong (and for Qantas to be able to put its code on Jet Airways-operated services between Hong Kong and India). The code share will have minimal competition impact on the Australia-Hong Kong route as Qantas has advised the Commission that Jet Airways will not be selling code share seats between Australia and Hong Kong. This is consistent with the Australia-Hong Kong air services arrangements which prohibit fifth freedom or stopover rights by a marketing carrier on code shared flights.

2.9 Jet Airways is a Mumbai-based airline which commenced operations in 1993. It is reportedly now India's second largest airline, with an extensive domestic network and flights to at least 20 international destinations. It has code share relationships with 15 international airlines, including Qantas.¹ Jet Airways currently code shares on Qantas' Australia-Singapore services. Qantas code shares on Jet Airways' Delhi and Mumbai-Singapore services and plans to code share on its Mumbai-Hong Kong services.

2.10 The Commission notes that in addition to the Qantas-Jet Airways code share services between Australia and India via Singapore, Virgin Australia offers code share services to India on Silk Air and Singapore Airlines also via Singapore. In August 2013, Air India resumed direct flights between Sydney/ Melbourne and New Delhi. It is the only airline to offer direct services between Australia and India.

2.11 The major carriers on the Australia-India route are Singapore Airlines with 38 percent

¹ Source: Jet Airways Fact Sheet, August 2013. The Economic Times, 14 June 2013.

of origin/destination traffic for the year ended June 2013, followed by Malaysia Airlines (19 percent) and Thai Airways International (16percent). Qantas' share of the market was 6.5 percent.²

2.12 In the Commission's view, allowing Jet Airways to code share on Qantas-operated services between Australia and Hong Kong will enable Qantas to compete more effectively with services offered by other airlines on the India route. In these circumstances, the Commission does not have concerns that the code share application may not be of benefit to the public.

2.13 Under paragraph 4, the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their proposals. The Commission notes that Qantas is an established international carrier which is clearly capable of obtaining the necessary approvals and of implementing its proposals.

2.14 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Paragraph 15(2)(e) requires the inclusion of a condition stating the extent to which the carrier may use that capacity in joint services with another carrier. As is its normal practice, the Commission will also include a condition which requires Qantas to comply with the Australian Consumer Law and to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flight.

2.15 Nothing in this decision should be taken as indicating either approval or disapproval by the ACCC. This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

3 Decision [2013] IASC 224

3.1 In accordance with section 25 of the Act, the delegate, on behalf of the Commission, varies Determinations [2009] IASC 123, [2011] IASC 116 and [2011] IASC 117 which allocate capacity on the Hong Kong route, by:

adding the following conditions to the Determinations:

- “the capacity may be used by Qantas to provide services jointly with Jet Airways in accordance with:
 - the code share agreement between Qantas and Jet Airways dated 6 September 2006, as amended; or
 - any subsequent code share agreement between Qantas and Jet Airways for operations on the Australia-Hong Kong route, whether or not it replaces the existing agreement, with the prior approval of the Commission; and
- under any code share agreement with Jet Airways:
 - Qantas must price and sell its services on the route independently of Jet Airways; and

² Source: Bureau of Infrastructure, Transport and Regional Economics.

- Qantas must not share or pool revenues on the route with Jet Airways; and
- under the code share arrangements with Jet Airways, Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking. Nothing in this determination exempts Qantas from complying with the Australian Consumer Law.”

Dated: 3 September 2013



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners