



Australian Government
International Air Services Commission

DECISION

Decision: [2014] IASC 231
Variation of: [2007] IASC 116, [2013] IASC 120
The Route: Singapore
The Applicant: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/201467

The Commission's delegate varies Determination [2007] IASC 116 and [2013] IASC 120 to permit SriLankan Airlines to code share on Qantas services on the Singapore route, and permit Qantas to code share on SriLankan Airlines between Singapore and Sri Lanka.

1 The application

1.1 On 17 September 2014, Qantas Airways Limited (Qantas) applied for a variation to Determination [2007] IASC 116 (as varied) and [2013] IASC 120 (together, the Determinations) to enable SriLankan Airlines to code share on flights operated by Qantas on the Singapore route, as well as for Qantas to code share on SriLankan Airlines flights between Singapore and Colombo. Qantas indicated the code share on the Singapore route will commence on 26 October 2014.

1.2 The Determinations respectively allocate unlimited passenger capacity and frequency on the Singapore route, as well as 300 seats of own stopover capacity between Singapore and Colombo. Determination [2007] IASC 116 includes conditions which allow Qantas to code share with any wholly-owned Qantas Group subsidiary, British Airways, Air France, Air Malta, Jet Airways, Iberia, Japan Airlines, China Eastern, Finnair and Emirates; [2013] ISAC 120 allows for code share with Emirates and any wholly-owned Qantas Group subsidiary.

1.3 On 17 September 2014, the Commission published a notice, in accordance with section 22 of the Act, inviting submissions about the application for variation. No submissions were received. All material supplied by the applicant is available on the Commission's website, www.iasc.gov.au.

2 Delegate's assessment

2.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (the Act) and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission may consider the application for variation. (For purposes of this decision, 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 application is a transfer application as so defined in subsection 4(1) of the Act and has 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 Australia-Singapore air services arrangements provide for unrestricted capacity for air services between the two countries. While there are capacity restrictions under the Singapore arrangements for Australian carriers offering services beyond Singapore into Colombo, the Register of Available Capacity indicates there are currently 500 seats available between Singapore and Sri Lanka under the Singapore air services arrangements, and no Australian carriers are looking to increase their capacity entitlements on the route. The Commission also notes the strong competition provided across the route with Virgin Australia code sharing on flights between Australia and Singapore on both Singapore Airlines and Etihad Airways, as well as between Singapore and Colombo on Singapore Airlines.

2.9 SriLankan Airlines operates a network of predominantly short and medium-haul services in South Asia, East Asia and the Middle East, with select long-haul services to Europe. SriLankan Airlines currently serves the Australian market through a code share with Malaysia Airlines. In view of this, the Commission considers it unlikely that SriLankan Airlines would commence own aircraft operations to Australia absent the code share, at least in the short to medium term.

2.10 In the Commission's view, allowing SriLankan Airlines to code share on Qantas

services between Australia and Singapore and Qantas to code share on SriLankan Airlines services between Singapore and Colombo will add to the number of carriers marketing services on both routes and is unlikely to have a detrimental impact on competition. The Commission has previously granted authorisation for Qantas to code share with a number of other carriers on the Singapore route.

2.11 In light of the above, the Commission does not have concerns that the code share application may not be of benefit to the public.

2.12 Under paragraph 4 of the Policy Statement, 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 incumbent on the Singapore route, which is clearly capable of obtaining the necessary approvals and of implementing its proposals.

2.13 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.

2.14 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 varying Determination [2007] IASC 116 and [2013] IASC 120 allocating capacity to Qantas on the Singapore route ([2014] IASC 231)

3.1 In accordance with section 25 of the Act, the delegate, on behalf of the Commission, varies Determinations [2007] IASC 116 and [2013] IASC 120 which allocate capacity on the Singapore route, by:

adding the following conditions to the Determinations:

- the capacity may be used by Qantas to provide services jointly with SriLankan Airlines in accordance with the code share agreement between Qantas and SriLankan Airlines dated 16 September 2014, as amended;
- Qantas must apply to the Commission for approval of any proposed variations to the code share agreement with SriLankan Airlines which would change the relevant commercial aspects of the agreement from a free sale code share arrangement to a block space, or vice versa, or if Qantas proposes to add third country routes on which the airlines will code share if the additional routes would require a variation to a determination held by Qantas;
- in providing joint services, the airlines may not jointly price and market their services, or share or pool revenues/profits on the route, unless such practices are authorised by the ACCC or otherwise by the Australian Competition Tribunal, in the event of review by the Tribunal; and

- under the code share arrangements with SriLankan Airlines, the airlines 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 the airlines from complying with the Australian Consumer Law.

Dated: 26 September 2014



Marlene Tucker
Executive Director
Delegate of the IASC Commissioner