



## Australian Government

### International Air Services Commission

#### DECISION

**Decision:** [2018] IASC 213  
**Variation of:** [2016] IASC 108  
**The Route:** France  
**The Applicant:** Qantas Airways Ltd  
(ABN 16 009 661 901)  
**Public Register File:** IASC/APP/201825

**The Commission varies Determination [2016] IASC 108 to permit the use of the capacity on the France route for code sharing between Qantas and Air France. The permission is valid for the duration of the determination commencing from 15 June 2018.**

## 1 The application

1.1 On 23 May 2018, the International Air Services Commission (the Commission) received an application from Qantas Airways Limited (Qantas) seeking to vary Determination [2016] IASC 108 (the Determination) to enable Qantas and Air France to code share on the France route. Qantas provided a copy of its code share agreement with Air France, on a confidential basis. Qantas further indicated that the code share services would be available for booking from 5 June 2018 for travel from 20 July 2018.

1.2 The Determination allocates to Qantas 250 one-way seats per day averaged over 12 months in each direction on the France route in accordance with the Australia - France air services arrangements. The Determination permits Qantas to provide code share services on the France route with British Airways and Emirates.

1.3 On 24 May 2018, the Commission published a notice, in accordance with section 22 of the *International Air Services Commission Act 1992* (the Act), inviting submissions about the application. No submissions were received. All non-confidential material supplied by the applicant is available on the Commission's website, [www.iasc.gov.au](http://www.iasc.gov.au).

## 2 Relevant provisions of the air services arrangements

2.1 Under the Australia - France air services arrangements, the designated airline(s) of Australia may enter into arrangements with other airlines, including airlines of third countries, to undertake services through code share, blocked space or other joint venture arrangements.

2.2 The total traffic carried through code share or other joint venture arrangements by the Australian designated airline(s) will not exceed 400 one-way seats daily on a yearly basis. Currently, all 400 one-way seats of capacity entitlements have been allocated to Australian

carriers (250 seats to Qantas and 150 seats to Virgin Australia). There are 3.0 units of capacity per week for own-operated services by Australian designated airlines but none of these capacity entitlements has been allocated.

### **3 Commission's assessment**

3.1 Qantas' application seeks to vary the Determination 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.

3.2 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.

3.3 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.

3.4 In accordance with section 11 of the Act, the Hon. Michael McCormack MP, Deputy Prime Minister and Minister for Infrastructure and Transport, issued the International Air Services Commission Policy Statement 2018 (the Policy Statement), which came into effect on 28 March 2018. The Policy Statement sets out the criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.5 Section 7 of the Policy Statement explains that in deciding whether to vary a determination, the Commission is to have regard to the 'reasonable capability criterion' set out in section 8 of the Policy Statement and any of the additional criteria set out in section 9 that the Commission thinks to be relevant.

3.6 Section 18 of the Policy Statement which specifically deals with 'transfer applications' such as this one, provides that, in assessing whether the variation requested would not be of benefit to the public for purposes of subsection 25(2) of the Act, the Commission is to have regard to certain matters including the 'reasonable capability criterion' in section 8 of the Policy Statement and may have regard to any of the additional criteria set out in section 9 of the Policy Statement that it considers to be relevant.

3.7 Under the 'reasonable capability criterion' in section 8 of the Policy Statement, the Commission is to assess the extent to which an Australian carrier is reasonably capable of obtaining any licences, permits or other approvals required to operate on and service the route and of using the capacity allocated under the determination. The Commission notes that Qantas is an established international carrier, and therefore finds that it is reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated under the determination.

3.8 The Commission further notes that Qantas does not operate its own metal on the France route and has been utilising its capacity allocation for the provision of code share services with British Airways and Emirates. In the Commission's view allowing Qantas to code share on flights operated by Air France would provide more options to Australian travellers and is unlikely to have a detrimental impact on competition. For this reason, the

Commission did not find it necessary to apply any of the additional criteria set out in section 9 of the Policy Statement.

3.9 The Commission finds that the matters specified in paragraph 18(2)(b)<sup>1</sup> of the Policy Statement are not relevant to the variation under consideration. There is nothing to suggest that Qantas' transfer application involves speculative activity, and Qantas has exercised the allocation in question for a period of more than six months.

3.10 Having considered the criteria set out in section 18 of the Policy Statement, the Commission is not satisfied that the allocation, as proposed to be varied in Qantas' application, would not be of benefit to the public. Therefore, in accordance with section 25 of the Act, the Commission must make a decision varying the determination in a way that gives effect to the variation requested in the transfer application.

3.11 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.

3.12 The Commission has decided to add conditions permitting the use of the capacity for the provision of code share services between Qantas and Air France on the France route in accordance with the Australia-France air services arrangements. In accordance with section 23 of the Policy Statement, Qantas is required to take all reasonable steps to ensure that passengers are informed at the time of booking that one or more other carriers may operate the flight.

3.13 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.

#### **4 Decision varying Determination [2016] IASC 108 allocating capacity to Qantas on the France route ([2018] IASC 213)**

4.1 In accordance with section 25 of the Act, the Commission varies Determination [2016] IASC 108 which allocates capacity to Qantas on the France route, by:

*adding* the following conditions to the Determinations:

- the capacity may be used by Qantas for the provision of code share services with Air France in accordance with the code share agreement between Qantas and Air France with effect from 23 May 2018 and the air services arrangements between Australia and France;
- Qantas must apply to the Commission for approval of any proposed variations to the code share agreement between Qantas and Air France which would change the relevant commercial aspects of the agreement from a free-sale code share arrangement to a block

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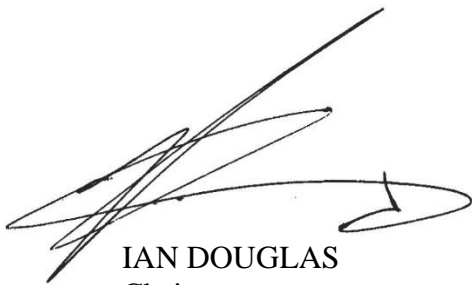
<sup>1</sup> Paragraph 18(2)(b) provides that the Commission is to have regard to the following matters, to the extent that they are relevant to the variation under consideration: (i) the undesirability of approving a transfer where doing so will, or is reasonably likely to, permit or encourage any form of speculative activity, including trading in capacity allocations for commercial benefit; (ii) the undesirability, other than in exceptional cases, of approving a transfer application made by a carrier that has never exercised an allocation for a period of less than six months.

space, or vice versa, or if Qantas proposes to add third country routes on which the airlines will code share where Australian capacity entitlements will be used for services on that route;

- in providing code share (or 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
- to the extent that the capacity is used to provide code share (or joint) services on the route, Qantas must take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight. Nothing in this determination exempts the airlines from complying with the Australian Consumer Law.

4.2 This decision comes into effect from the date of issue and is valid for the duration of Determination [2016] IASC 108.

Dated: 15 June 2018



IAN DOUGLAS  
Chairperson



IAN HARRIS  
Commissioner



KAREN GOSLING  
Commissioner