



## Australian Government

### International Air Services Commission

#### DECISION

**Decision:** [2018] IASC 214  
**Variation of:** [2015] IASC 115  
**The Route:** Hong Kong  
**The Applicant:** Qantas Airways Ltd  
(ABN 16 009 661 901)  
**Public Register File:** IASC/APP/201826

**The Commission varies Determination [2015] IASC 115 to permit the use of the capacity on the Hong Kong 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 [2015] IASC 115, as amended, (the Determination) to enable Air France to code share on flights operated by Qantas on the Hong Kong 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 28 weekly frequencies of passenger capacity on the Hong Kong route. The Determination permits the capacity to be used by either Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas (which in this case is Jetstar Airways Pty Ltd) and for code sharing between them.

1.3 Additionally, the Determination permits code share services between Qantas and the following airlines: British Airways; Jet Airways and Finnair. The Determination was subsequently amended to permit Qantas to use the capacity for code share services with El Al Airlines (Decision [2017] IASC 213) and LATAM Airlines (Decision [2017] IASC 218).

1.4 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 for variation to enable Air France to code share on Qantas services. 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 Paragraph 7(2)(aa) of the Act provides that the Commission must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s). Any variation made to an existing allocation of capacity should also not be contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 Under the Australia-Hong Kong air services arrangements, a designated airline of Australia may, subject to conditions, enter into code share arrangements, whether as the operating or marketing airline, in respect of passenger or freighter services with another designated airline(s) of Australia, an airline(s) of Hong Kong and an airline(s) of a third country or countries.

## **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 Minister for Infrastructure and Transport, the Hon. Michael McCormack MP, made 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 the additional criteria set out in section 9.

3.6 Section 18 of the Policy Statement which specifically deals with 'transfer applications' such as this one, effectively 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 capacity on the route.

3.8 The Commission notes there are a number of major carriers offering either own-operated or code share services between Hong Kong and various points in Australia, thus providing various travel options to consumers. Qantas operates up to 28 weekly frequencies between Hong Kong and Sydney, Melbourne and Brisbane. Virgin Australia, Cathay Pacific and Hong Kong Airlines also operate direct services between Australia and Hong Kong. Cathay Pacific has the biggest share of the passenger traffic, operating up to 75 frequencies per week in the 2018 Northern Summer IATA scheduling period<sup>1</sup>.

3.9 In the Commission's view, allowing Air France to code share on Qantas-operated services between Australia and Hong Kong will add to the number of carriers that market services on the route and is unlikely to have a detrimental impact on competition. For this reason, the Commission did not find it necessary to apply the additional criteria in section 9 of the Policy Statement.

3.10 The Commission finds that the matters specified in paragraph 18(2)(b)<sup>2</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.

3.11 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, 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.

3.12 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions in a determination as it thinks fit. Paragraph 15(2)(e) requires the inclusion of a condition stating the extent to which the carrier may use the capacity allocated under a determination in joint services with another carrier.

3.13 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 Hong Kong route in accordance with the Australia-Hong Kong 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.

3.14 Nothing in this decision should be taken as indicating either approval or disapproval by the Australian Competition and Consumer Commission (ACCC). This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

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<sup>1</sup> Northern Summer 2018 International Airlines Timetable Summary, [www.infrastructure.gov.au](http://www.infrastructure.gov.au)

<sup>2</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.

#### **4 Decision varying Determination [2015] IASC 115 allocating capacity to Qantas on the Hong Kong route ([2018] IASC 214)**

4.1 In accordance with section 25 of the Act, the Commission varies Determination [2015] IASC 115 which allocates capacity to Qantas on the Hong Kong route, by:

*adding* the following conditions to the Determinations:

- the capacity may be used by Qantas to provide code share services with Air France in accordance with the code share agreement between Qantas and Air France dated 23 May 2018 and the air services arrangements between Australia and Hong Kong;
- 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 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, the airlines 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 [2015] IASC 115.

Dated: 15 June 2018



IAN DOUGLAS  
Chairperson



JAN HARRIS  
Commissioner



KAREN GOSLING  
Commissioner