



Australian Government

International Air Services Commission

DECISION

Decision: [2016] IASC 223
Variation of: [2007] IASC 116
The Route: Singapore
The Applicant: Qantas Airways Ltd
(ABN 16 009 661 901)
Public Register File: IASC/APP/201642

The Commission varies Determination [2007] IASC 116 to permit Fiji Airways to code share on Qantas-operated services on the Singapore route. The permission is valid for the duration of the Determination commencing from the date of issue of this decision.

1 The application

1.1 On 22 November 2016, the International Air Services Commission (the Commission) received an application from Qantas Airways Limited (Qantas) seeking to vary Determination [2007] IASC 116 (the Determination), as amended, to enable Fiji Airways to code share on flights operated by Qantas on the Singapore route. Qantas provided a copy of the confidential code share agreement between Qantas and Fiji Airways. Qantas further indicated the code share with Fiji Airways on the Singapore route will commence on 1 February 2017.

1.2 The Determination allocates to Qantas unlimited passenger capacity and frequency on the Singapore route. The Determination permits the capacity to be used by either Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas.

1.3 The original Determination and subsequent variations permit code share services between Qantas and the following airlines: a Qantas' wholly-owned subsidiary; British Airways; Air France; Air Malta, Jet Airways; Iberia Airlines; Japan Airlines; China Eastern Airlines; Finnair; Emirates; Bangkok Airways; Sri Lankan Airlines; and for Jetstar and Emirates to code share on the route.

1.4 On 22 November 2016, 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 non-confidential material supplied by the applicant is available on the Commission's website, www.iasc.gov.au.

2 Relevant provisions of the air services arrangements

2.1 The Australia-Singapore air services arrangements provide for unrestricted capacity for air services between the two countries which means designated airlines may determine the frequency and capacity of passenger and all-cargo services on the route.

2.2 Additionally, Australian carriers may enter into unrestricted code share, blocked space or other cooperative marketing arrangements with any other airline, including airlines of third parties.

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 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.

3.5 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.

3.6 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).

3.7 The Commission notes there are a number of major carriers offering either own-operated or code share services between Singapore and various points in Australia, thus providing various travel options to consumers. For example, Singapore Airlines operates up to 128 frequencies per week, most of which are under code share arrangements with a

number of international carriers including Virgin Australia¹.

3.8 In the Commission's view, allowing Fiji Airways to code share on Qantas services between Australia and Singapore will add to the number of carriers marketing services on the route 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.

3.9 In light of the above, the Commission does not have concerns that the code share application may not be of benefit to the public. For this reason, it did not specifically consult the ACCC and did not find it necessary to apply the additional criteria set out in paragraph 5 of the Policy Statement.

3.10 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.

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. As is its normal practice, the Commission has also decided to 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.

3.12 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 [2007] IASC 116 allocating capacity to Qantas on the Singapore route ([2016] IASC 223)

4.1 In accordance with section 25 of the Act, the Commission varies Determination [2007] IASC 116 which allocates capacity on the Singapore route, by:

adding the following conditions to the Determinations:

- the capacity may be used by Qantas to provide code share services with Fiji Airways in accordance with the code share agreement between the Qantas and Fiji Airways dated 26 November 2002, as amended and the air services arrangements between Australia and Singapore;
- Qantas must apply to the Commission for approval of any proposed variations to the code share agreement with Fiji Airways 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

¹ Northern Winter 2016/2017 Timetable Summary,
<https://infrastructure.gov.au/aviation/international/timetable.aspx>

code share where Australian capacity entitlements will be used for services on that route;

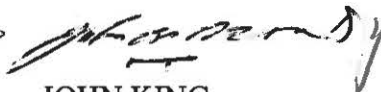
- in providing code share (or joint) services, the airlines may not jointly price and market their services, or share or pool revenues/profits on the route, unless such practices are authorised by the ACCC or otherwise by the Australian Competition Tribunal, in the event of review by the Tribunal; and
- 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 [2007] IASC 116.

Dated: 19 December 2016



IAN DOUGLAS
Chairperson



JOHN KING
Commissioner



JAN HARRIS
Commissioner