



Australian Government

International Air Services Commission

DECISION

Decision:	[2024] IASC 201
The Route:	Korea
The Applicant:	Qantas Airways Limited (ABN 16 009 661 901) (Qantas)
Variation Of:	[2022] IASC 113, [2023] IASC 122 and [2023] IASC 129
Public Register File:	IASC/APP/202371

The Commission varies Determinations [2022] IASC 113, [2023] IASC 122 and [2023] IASC 129, to permit the use of the capacity on the Korea route for code sharing between Jetstar Airways Pty Limited (Jetstar) and Finnair, subject to certain conditions. The permission is valid for the duration of the Determinations commencing from the date of issue of this decision.

1 The application

1.1 On 24 November 2023, Qantas applied to the International Air Services Commission (the Commission) seeking to vary the following determinations:

- [2022] IASC 113;
- [2023] IASC 122;
- [2023] IASC 129; and
- [2019] IASC 103 and its renewal Determination [2023] IASC 116.

1.2 The application seeks permission for Finnair to offer code share services, as marketing carrier, on Jetstar Airways Pty Limited (Jetstar) operated services on the Korea route. The code share services would be offered under a free sale arrangement from 1 January 2024 or as soon as all necessary approvals are received. Qantas provided the Commission with a copy of Jetstar's code share agreement with Finnair, on a confidential basis.

1.3 On 19 December 2023, Qantas sought to amend its original application to omit Determination [2019] IASC 103 and its renewal Determination [2023] IASC 116 from the list of determinations requested to be varied. The Commission has therefore only considered the variation of Determinations [2022] IASC 112, [2023] IASC 122 and [2023] IASC 129.

1.4 In its application, Qantas stated that the proposed code share services will enable Finnair to place its marketing code on Jetstar's Sydney-Seoul (Incheon) and Brisbane-Seoul (Incheon) services, providing connectivity between Australia and Finland through Finnair's operated services between Helsinki and Seoul (Incheon). Further, the airline stated that the ability for Finnair to expand its selling proposition by independently marketing and pricing services would provide an increased range of choices and benefits for consumers.

1.5 The Determinations allocate to Qantas 3,533 seats of passenger capacity in each direction to operate passenger services on the Korea route, and permit the capacity to be used by Qantas' wholly-owned subsidiary, Jetstar, subject to certain conditions.

1.6 In accordance with section 22 of the *International Air Services Commission Act 1992* (the Act), the Commission published, on 28 November 2023, a notice inviting submissions about the application for variation. No submissions were received.

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

2 Air services arrangements

2.1 Paragraph 7(2)(aa) of the Act provides that the Commission must not make a variation to an existing allocation of capacity contrary to any restrictions contained in a bilateral arrangement(s).

2.2 According to the Register of Available Capacity, there are 4,567 seats of passenger capacity per week available for allocation to Australian carriers to operate services to and from Sydney, Melbourne, Brisbane and Perth. Unrestricted capacity may be operated to/from all other points in Australia.

2.3 Under the Australia-Korea air services arrangements, Australian designated airlines may, subject to certain conditions, enter into cooperative marketing arrangements such as blocked space, code sharing or leasing arrangements, whether as the operating airline(s) or the marketing airline(s), in respect of passenger, combination and/or cargo air services with airline(s) of Australia, (an) airline(s) of Korea and (an) airline(s) of any third country or countries.

2.4 Further, the Australia-Korea air services arrangements provide that capacity offered by the designated carrier(s) as the marketing carrier(s) on services operated by the other airlines, including airlines of a third country or countries, shall be counted against any capacity entitlements of the contracting party designating the marketing carrier(s).

3 The Commission's consideration

3.1 Qantas' application seeks to vary several 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 of the Act.

3.2 Subsection 25(1) provides that the Commission must make a decision varying a 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 a 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 of the Act.

3.4 Under section 11 of the Act, the Minister 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 18 of the Policy Statement specifically deals with ‘transfer applications’ such as this one. It provides that, in assessing whether the variation requested would not be of benefit to the public for the purpose of subsection 25(2) of the Act, the Commission is to have regard to the ‘reasonable capability criterion’ set out in section 8 of the Policy Statement and may have regard to any of the additional criteria set out in section 9 that the Commission considers to be relevant. The Commission is also to have regard to the matters specified in paragraph 18(2)(b) of the Policy Statement to the extent that they are relevant to the variation under consideration.

3.6 ‘Reasonable capability criterion’ is defined in section 8 of the Policy Statement to mean the extent to which Australian carriers are reasonably capable of: a) obtaining the necessary approvals to operate on and service the route, and b) of using the capacity allocated under the Determination. The ‘additional criteria’ to which the Commission may have regard are set out in section 9 of the Policy Statement.

3.7 The Commission notes that Jetstar is an established international carrier operating services on the Australia-Korea route, and therefore finds that the airline is reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated under the Determinations.

3.8 The Australia-Korea route is serviced by five carriers offering own-operated and/or codeshare services: Qantas, Jetstar, Korean Air, Asiana Airlines and T’way Air.

3.9 For the Northern Winter 2023-24 IATA scheduling season, Korean Air is the largest airline on the route, operating up to 14 direct services per week between Australia and Korea (Seoul (Incheon) - Sydney v.v. and Seoul (Incheon) - Brisbane v.v.), followed by Asiana Airlines operating up to 9 direct services (Seoul (Incheon) - Sydney v.v.).

3.10 The Qantas Group operates up to 11 direct services per week on the route with Jetstar operating up to 7 direct services per week between Sydney - Seoul (Incheon) v.v. and Brisbane - Seoul (Incheon) v.v. Qantas operates up to 4 direct services per week between Sydney and Seoul (Incheon) v.v.

3.11 The proposed code share arrangements between Jetstar and Finnair would involve connections between Jetstar's Sydney - Seoul (Incheon) and Brisbane - Seoul (Incheon) flights and daily services operated on the Seoul (Incheon) - Helsinki route by Finnair.

3.12 Finnair does not currently operate its own services on the Finland-Australia route, however, the airline offers code share services, as marketing carrier, on Qantas and Jetstar operated flights between Australia and Singapore¹, Japan (except to service Tokyo-Haneda)² and Hong Kong³ – as previously approved by the Commission.

3.13 Finnair offers services over its Helsinki hub to 72 points in Europe, 11 points in Asia, 2 points in the Middle East and 6 points in North America⁴.

3.14 The Commission considers that the proposed arrangements between Jetstar and Finnair will provide an additional option and choice for consumers to travel between Sydney and Brisbane and Helsinki (through Seoul (Incheon)), and will enable further connections to/from points in Europe, Asia, the Middle East and North America marketed via Finnair's distribution channels.

3.15 The Commission notes that it has received no submissions opposing the variation sought in Qantas' transfer application. This means that the variation sought by Qantas has not been contested, and would not limit the ability of other carriers to utilise capacity on the route. There is nothing before the Commission to indicate that its assessment of benefit to the public for the purpose of subsection 25(2) of the Act would be assisted by having regard to the additional criteria in section 9 of the Policy Statement.

3.16 Having considered the criteria set out in section 18 of the Policy Statement, the Commission is satisfied that each allocation, as proposed to be varied by permitting Finnair to code share, as marketing carrier, on flights operated by Jetstar on the Australia-Korea route, would be of benefit to the public. The Commission considers that there is unlikely to be any lessening of public benefit through authorising the code sharing arrangements in relation to the Korea route. Therefore, in accordance with section 25 of the Act, the Commission must make a decision varying each Determination in a way that gives effect to the variation requested in the transfer application.

3.17 The Commission finds that the matters specified in paragraph 18(2)(b) of the Policy Statement are not relevant to the variation under consideration. The Commission does not have information to suggest that Qantas' transfer application involves speculative activity. Jetstar, a wholly-owned subsidiary of Qantas, is an established international carrier that currently holds multiple determinations and other regulatory approvals enabling the carrier to operate scheduled international air services on various routes, including the Australia-Korea route.

¹ Determination [2017] IASC 131, Qantas and Finnair and Jetstar and Finnair

² Determination [2021] IASC 101, Jetstar and Finnair

³ Determination [2019] IASC 129, Qantas and Finnair

⁴ Data sourced from FlightConnections.com

3.18 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.

3.19 The Commission has decided to add conditions to each Determination permitting the use of the capacity for the provision of code share services between Jetstar and Finnair on the Korea route. As required by section 23 of the Policy Statement, the Commission has included a condition requiring the airlines to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flights.

3.20 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.

4 Decision varying Determinations [2022] IASC 113, [2023] IASC 122 and [2023] IASC 129 which allocate capacity to Qantas Airways Limited on the Korea route ([2024] IASC 201)

4.1 In accordance with section 25 of the Act and the air services arrangements between Australia and Korea, the Commission varies Determinations [2022] IASC 113, [2023] IASC 122 and [2023] IASC 129 which allocate capacity to Qantas Airways Limited on the Korea route, by:

adding the following conditions to the Determination:

- The capacity may be used by Jetstar Airways Pty Limited to provide code share services with Finnair in accordance with the code share agreement between the airlines, made effective on 15 May 2017, as amended.
- Qantas Airways Limited must apply to the Commission for approval of any proposed variations to the code share agreement between Jetstar Airways Pty Limited and Finnair, which would change the relevant commercial aspects of the structure of the agreements from a free sale code share arrangement to a blocked space, or if the airlines propose to add third country routes on which the airlines will code share where Australian capacity will be used for services on that route.
- To the extent that the capacity is used to provide code share 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 Australian Consumer Law.

4.2 This decision comes into effect from the date of issue and is valid for the duration of Determinations [2022] IASC 113, [2023] IASC 122 and [2023] IASC 129.

Dated: 11 January 2024



Genevieve Butler
Chairperson



Jane McKeon
Commissioner