



Australian Government

International Air Services Commission

DECISION

Decision: [2020] IASC 213
Variation Of: [2019] IASC 121
The Route: Singapore
The Applicant: Qantas Airways Limited
(Qantas) ABN 16 009 661 901
Public Register File: IASC/APP/202012

The Commission varies Determination [2019] IASC 121 to permit the use of the capacity on the Singapore-Colombo route for code sharing between Qantas Airways Limited and Jetstar Asia Private Limited. The permission is valid for the duration of the determination commencing from the date the determination comes into effect.

1 The application

1.1 On 21 February 2020, Qantas applied to the International Air Services Commission (the Commission) for a variation of Renewal Determination [2019] IASC 121 to permit the utilisation of the capacity for the provision of code share services between Qantas Airways Limited (Qantas) and Jetstar Asia Private Limited (Jetstar Asia) on the Singapore-Colombo route. Specifically, it is proposed that Qantas will code share on selected flights operated by Jetstar Asia between Singapore and Colombo, under a free-sale arrangement.

1.2 In accordance with section 22 of the *International Air Services Commission Act 1992* (the Act), on 24 February 2020, the Commission published Qantas' application on the Commission's website inviting submissions about the application. No submissions were received.

1.3 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 Under paragraph 7(2)(aa) of the Act, 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 The Australia-Singapore air services arrangements permit the designation of multiple carriers to operate international air transport services between Australia and Singapore. The

air services arrangements permit designated Australian carriers to determine the frequency and capacity they wish to operate between Australia and Singapore.

2.3 The air service arrangements further provide that designated airlines of Australia may operate and exercise ‘full beyond fifth freedom traffic rights’ between Singapore and any points beyond Singapore subject to certain restrictions. One of these restrictions concerns the exercise by Australian carriers of own-stopover traffic rights between Singapore and Colombo. When exercising own-stopover traffic rights beyond Singapore to Colombo in either direction, Australian carriers are restricted to 1,200 seats per week in each direction, 600 seats of which have been allocated to Qantas while 400 seats have been allocated to Virgin Australia. There are 200 seats per week in each direction still available for allocation to Australian carriers for the exercise of own stop-over rights between Singapore and Colombo.

2.4 Additionally, a designated carrier of Australia may enter into unrestricted code share, blocked space or other cooperative marketing arrangements with any other airline, including airlines of third countries.

3 The Commission's assessment

3.1 Qantas seeks to vary Renewal Determination [2019] IASC 121 which allocates 300 seats per week in each direction of passenger capacity on the Singapore route to be used to exercise own stopover rights between Singapore and Colombo. The determination permits the capacity to be used by Qantas and/or its wholly-owned subsidiary, Jetstar Airways Pty Limited (so long as it remains a wholly-owned subsidiary of Qantas), and may be used by Qantas to provide code share services with SriLankan Airlines. Qantas is now seeking to vary the Determination to enable Qantas to code share on a free-sale basis on selected flights operated by Jetstar Asia between Singapore and Colombo. This is in addition to the existing code share between Qantas and SriLankan Airlines on the Singapore-Colombo route.

3.2 The 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 of the Act.

3.3 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.

3.4 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.

3.5 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.

3.6 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, and may have regard to any of the additional criteria that it 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.

3.7 ‘Reasonable capability criterion’ is defined in section 8 of the Policy Statement to mean the extent to which Australian carriers are reasonably capable of obtaining the necessary approvals to operate on and service the route and 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.

3.8 The Commission considered the application of the reasonable capability criterion to the circumstances of this application. The Commission notes that Qantas is an established international carrier, and therefore finds that the airline is reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated under the Determination.

3.9 The Commission did not have regard to the additional criteria in section 9 of the Policy Statement. The Commission notes that it received no adverse submissions opposing the variation sought in the 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 apply for or utilise capacity on the route. In these circumstances, 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.

3.10 The Commission finds that the matters specified in paragraph 18(2)(b) of the Policy Statement are not relevant to the variation under consideration. There is nothing to suggest that Qantas’ 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 satisfied that the allocation, as proposed to be varied permitting Qantas to code share on Jetstar Asia services between Singapore and Colombo, would 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 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 to enable Qantas to code share on flights operated by Jetstar Asia between Singapore and Colombo, in accordance with the Australia-Singapore air services arrangements. As required by section 23 of the Policy Statement, the Commission has decided to include a condition requiring the airlines to

take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating 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.

4 Decision varying Determination [2019] IASC 121 allocating capacity to Qantas on the Singapore route ([2020] IASC 213)

4.1 In accordance with section 25 of the Act, the Commission varies [2019] IASC 121 which allocates capacity to Qantas Airways Limited on the Singapore route, by:

adding the following conditions to the Determination:

- The capacity may be used by Qantas to provide code share services with Jetstar Asia between Singapore and Colombo in accordance with the code share agreement between Qantas and Jetstar Asia made on 9 September 2013 (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 between Qantas and Jetstar Asia 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 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 the Australian Consumer Law.

4.2 This decision comes into effect from the date Determination [2019] IASC 121 comes into effect and is valid for the duration of the Determination.

Dated: 12 March 2020


IAN DOUGLAS
Chairperson


KAREN GOSLING
Commissioner