



Australian Government

International Air Services Commission

DECISION

The Route: Singapore
The Applicant: Qantas Airways Limited
(Qantas) (ABN 16 009 661 901)
Decision: [2023] IASC 211
Variation Of: [2017] IASC 131
Public Register File: IASC/APP/202360

The Commission varies Determination [2017] IASC 131 to permit the use of the capacity on the Singapore route for code sharing between Qantas Airways Limited and InterGlobe Aviation Limited (IndiGo). 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 1 September 2023, Qantas applied to the International Air Services Commission (the Commission) seeking to vary Determination [2017] IASC 131 (as varied), to permit the utilisation of capacity for code share services between Qantas and InterGlobe Aviation Limited (IndiGo) on the Singapore route. Specifically, it is proposed that IndiGo will offer code share services, as marketing carrier, on all flights operated by Qantas on the Singapore route, under a free sale arrangement. Qantas provided the Commission with a copy of the code share agreement with IndiGo, on a confidential basis.

1.2 On 4 October 2023, Qantas provided the Commission with additional advice that the code share services with IndiGo are intended to be offered on all Qantas services on the Singapore route, that is, between Singapore and Sydney, Melbourne, Brisbane and Perth. The proposed code share will provide connections between these flights and services operated by IndiGo between Singapore and eight cities in India (Tiruchirappalli, Kolkata, Bhubaneswar, Bangalore, Chennai, Hyderabad, Mumbai and New Delhi). The airline further stated that it expects the proposed code share services to enhance connectivity between Australia and India via Singapore, providing additional options and choice for consumers.

1.3 The Determination allocates to Qantas unlimited passenger capacity in each direction on the Singapore route and permits the capacity to be used by Qantas and/or any wholly-owned subsidiary of Qantas, such as Jetstar Airways Pty Limited (Jetstar). The Determination permits code share services between Qantas and the following airlines: British Airways; Air France; Jet Airways; Japan Airlines; China Eastern; Finnair; Emirates; Bangkok Airways; Sri Lankan Airlines; Fiji Airways; LATAM Airlines and

KLM Royal Dutch Airlines. Additionally, the Commission has permitted the capacity to be used by Jetstar to code share with Emirates; Finnair and Fiji Airways.

1.4 In accordance with section 22 of the *International Air Services Commission Act 1992* (the Act), Commission published, on 4 September 2023, a notice inviting submissions about the application for variation to enable IndiGo to code share on Qantas services. No submissions were received.

1.5 On 25 October 2023, Qantas sought to amend its original application to request the removal of the condition permitting the use of the capacity by Qantas to offer code share services on the route with Jet Airways.

1.6 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 make a variation to an existing allocation of capacity contrary to any restrictions 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 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.

2.4 The Australia-India air services arrangements provide that a designated airline of Australia may exercise fifth freedom traffic rights: (a) via intermediate points in Bangladesh, Myanmar, Sri Lanka, Thailand, Vietnam, Malaysia, Singapore, Brunei, Philippines, Indonesia; and (b) to/from any beyond points.

2.5 In exercising fifth freedom traffic rights as specified above, the designated airline of Australia will be entitled to operate up to 6,500 seats per week in each direction.

2.6 The designated airline(s) of Australia may code share on any airline, including third country airlines, with no restriction on capacity.

3 The Commission's consideration

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. The Commission has assessed the application in accordance with section 25 of the Act.

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 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 Qantas is an established Australian international carrier currently operating services on the Australia-Singapore route, and therefore finds that the airline is reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated under the Determination.

3.8 The Commission notes that there is unlimited passenger capacity on the route and that it has received no submissions opposing the variation sought in Qantas’ transfer application.

3.9 The Australia-India route is serviced by a number of carriers offering own-operated and/or code share services. Qantas and Air India offer direct services on the route, with Qantas operating up to four direct weekly services to New Delhi and Bengaluru in the current 2023 Northern Summer IATA scheduling period using various aircraft types. Air India is operating up to 10 direct weekly services with B787 aircraft during the same scheduling period.

3.10 A number of third country airlines provide indirect services between Australia and India by linking their Australia and India services over a midpoint in their home

country. These airlines include: Singapore Airlines, Malaysia Airlines, SriLankan Airlines, Cathay Pacific, Batik Air, Scoot, Qatar Airways and Thai Airways¹. Qantas is offering code share services on Cathay Pacific flights to three points in India (Mumbai, New Delhi, Chennai) via Hong Kong during the current scheduling period.

3.11 Singapore Airlines has the largest share for passenger arrivals to Australia with a country of origin of India, carrying 29 per cent of arriving passengers in the year ending July 2023. Air India had the next largest share in the period, carrying 13.8 per cent of arriving passengers, followed by Malaysia Airlines at 11.7 per cent, Scoot at 10.1 per cent and Qantas at 8.5 per cent².

3.12 Singapore Airlines currently operates daily services on the Australia-Singapore route from Australia's major gateways (Sydney, Melbourne, Brisbane and Perth) offering through services to eight cities in India (Kolkata, Chennai, Bangalore, Kochi, Hyderabad, Mumbai, Ahmedabad and New Delhi), as well as three weekly services from other points in Australia (Cairns and Darwin) to the before mentioned cities in India.³ Scoot, a wholly-owned subsidiary of Singapore Airlines, currently operates up to daily services on the Australia-Singapore route from Sydney, Melbourne and Perth, offering connections to six points in India (Amritsar, Coimbatore, Hyderabad, Tiruchirappalli, Trivandrum and Visakhapatnam).

3.13 The Commission considers that the proposed arrangement will enhance connectivity and provide additional options and choice for consumers through access to wider networks. Consumers will have a greater choice of connections on one-stop services between Australia and India, marketed through Qantas and IndiGo's distribution channels, including access to/from several additional destinations in India.

3.14 Noting the significant presence of indirect services offered by third country carriers between Australia and India, most notably via Singapore, in addition to direct services to Australia operated by Air India, and Qantas' share of the overall Australia-India passenger market, the Commission considers that the nature of the arrangements is unlikely to have a detrimental impact on competition.

3.15 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 in section 9 of the Policy Statement. The Commission considers that there is unlikely to be any lessening of public benefit through authorising the code sharing arrangement in relation to the Singapore route and such authorisation would not limit the ability of other carriers to apply for or utilise the capacity on the route.

3.16 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. Qantas is an established international carrier that currently holds

¹ Data sourced from FlightConnections.com.

² Data sourced from BITRE, October 2023.

³ Data sourced from FlightConnections.com.

multiple determinations and other regulatory approvals enabling the carrier to operate scheduled international air services on various routes, including the Australia-Singapore and the Australia-India route.

3.17 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 IndiGo to code share, as marketing carrier, on flights operated by Qantas on the Australia-Singapore route, 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.

3.18 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 capacity allocated under a determination in joint services with another carrier.

3.19 The Commission has decided to add conditions permitting the use of the capacity for the provision of code share services between Qantas and IndiGo on the Singapore 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 Determination [2017] IASC 131 which allocates capacity to Qantas Airways Limited on the Singapore route ([2023] IASC 211)

4.1 In accordance with section 25 of the Act, the Commission varies Determination [2017] IASC 131 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 Airways Limited to provide code share services with InterGlobe Aviation Limited in accordance with the code share agreement between Qantas Airways Limited and InterGlobe Aviation Limited, made effective on 31 May 2022, and the air services arrangements between Australia and Singapore and Australia and India.
- Qantas Airways Limited must apply to the Commission for approval of any proposed variations to the code share agreement between Qantas Airways Limited and InterGlobe Aviation Limited which would change the relevant commercial aspects of the structure of the agreement 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 the Australian Consumer Law.

Removing the following condition to the Determination:

- The capacity may be used by Qantas Airways Limited to provide code share services with Jet Airways.

4.2 This decision comes into effect from the date of issue and is valid for the duration of Determination [2017] IASC 131.

Dated: 25 October 2023


Genevieve Butler
Chairperson


Jane McKeon
Commissioner