



Australian Government

International Air Services Commission

DECISION

Decision:	[2024] IASC 203
The Route:	Indonesia
The Applicant:	Qantas Airways Limited (ABN 16 009 661 901) (Qantas)
Variation Of:	[2020] IASC 101
Public Register File:	IASC/APP/202410

The Commission varies Determination [2020] IASC 101, to permit the use of the capacity on the Indonesia route for code sharing between Jetstar Airways Pty Limited and KLM Royal Dutch Airlines, subject to certain conditions. 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 15 February 2024, as part of its renewal application, Qantas applied to the International Air Services Commission (the Commission) seeking to vary Determination [2020] IASC 101 (the Determination), to permit the utilisation of capacity for KLM Royal Dutch Airlines (KLM) to offer additional code share services, as marketing carrier, on flights operated by Qantas' wholly-owned subsidiary Jetstar Airways Limited (Jetstar). On 20 March 2024, Qantas provided the Commission with an updated copy of Jetstar's code share agreement with KLM, on a confidential basis.

1.2 The application seeks approval for KLM to increase its marketing on additional frequencies operated by Jetstar between Perth-Denpasar (Bali) and Brisbane-Denpasar (Bali). In its application, Qantas notes that KLM has offered code share services, as marketing carrier, on flights operated by Jetstar on the Indonesia route pursuant to Determinations [2013] IASC 135¹ (as renewed), [2019] IASC 116² (as renewed), [2021] IASC 107, [2021] IASC 118, [2022] IASC 110, [2023] IASC 102, [2023] IASC 107, and [2023] IASC 127 as issued by the Commission. The airline submits that the ability for KLM to market Jetstar services between Australia and Indonesia provides an increased range of choices and benefits for consumers, providing connectivity to KLM operated services between Amsterdam and Denpasar (Bali).

1.3 The Determination allocates to Qantas 670 seats of passenger capacity in each direction to operate passenger services on the Indonesia route, and permits the capacity

¹ Renewed by Determination [2023] IASC 131

² Renewed by Determination [2023] IASC 132

to be used by Jetstar, subject to certain conditions.

1.4 The Commission notes that the renewal aspect of Qantas' application will be considered by the Commission separately.

1.5 In accordance with section 22 of the *International Air Services Commission Act 1992* (the Act), the Commission published, on 19 February 2024, a notice inviting submissions about the application for variation. No submissions were received.

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 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 Under the Australia-Indonesia air services arrangements, Australian designated airlines may enter into code share, blocked space or other cooperative marketing arrangements, as the marketing and/or operating carrier with another Australian designated airline(s), with a designated airline(s) of Indonesia or with airline(s) of a third country.

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 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-Indonesia 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 further notes that it has previously provided for Jetstar to utilise the capacity allocated to Qantas by Determinations [2013] IASC 135 (as renewed), [2019] IASC 116 (as renewed), [2021] IASC 107, [2021] IASC 118, [2022] IASC 110, [2023] IASC 102, [2023] IASC 107, and [2023] IASC 127 on the Indonesia route, to offer code share services with KLM. The existing permission allows KLM to offer code share services, as marketing carrier, on flights operated by Jetstar on the Australia-Indonesia route.

3.9 The proposed code share arrangement contemplated by this Decision involves KLM expanding existing connections on Jetstar’s services from Perth to Denpasar (Bali) and from Brisbane to Denpasar (Bali).

3.10 The Commission considers that the proposed arrangements between Jetstar and KLM will provide additional options and choice for consumers to travel between Australia and Amsterdam, through Denpasar, marketed through KLM’s distribution channels.

3.11 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.

3.12 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 by permitting KLM to code share, as marketing carrier, on flights operated by Jetstar on the Australia-Indonesia 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 Indonesia route. 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.

3.13 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-Indonesia route.

3.14 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.

3.15 The Commission has decided to add conditions to the Determination permitting the use of the capacity for the provision of code share services between Jetstar and KLM on the Indonesia 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.

3.16 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 [2020] IASC 101 which allocates capacity to Qantas Airways Limited on the Indonesia route ([2024] IASC 203)

4.1 In accordance with section 25 of the Act and the air services arrangements between Australia and Indonesia, the Commission varies Determination [2020] IASC 101 which allocates capacity to Qantas Airways Limited on the Indonesia 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 KLM Royal Dutch Airlines in accordance with the code share agreement between the airlines, made effective on 21 January 2020, 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 KLM Royal Dutch Airlines, 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 Determination [2020] IASC 101.

Dated: 5 April 2024



Genevieve Butler
Chairperson



Jane McKeon
Commissioner