



**Australian Government**  

---

**International Air Services Commission**

**PROCEDURES FOR APPLICATIONS FOR CONSOLIDATION OF DETERMINATIONS**

**Introduction**

The Commission believes it would be simpler, more transparent and of public benefit if all determinations on a particular route could be consolidated into a single determination which allocates for each relevant Australian carrier the total amount of capacity previously allocated. This single determination would include all previous conditions, including but not limited to those relating to code sharing, and any newly approved conditions. Australian carriers are encouraged to seek such consolidations, but ultimately it is for carriers to decide whether to seek consolidated determinations or to operate under existing determinations. Airlines may, if they wish, apply to consolidate some but not all their determinations on a route. The Commission's preference, however, would be for applications for consolidation to be for all determinations on a route in order to have all capacity and conditions on a route in the one determination.

The procedures set out below are consistent with the *International Air Services Commission Act 1992* (the Act) and the International Air Services Policy Statement No. 5 issued by the Minister on 19 May 2004 (the Policy Statement).

Where a carrier holds multiple determinations on a particular route, there is no single point of reference to allocated capacity or to conditions applying to that capacity. Consequently, the Commission has developed two sets of procedures for consolidation of determinations, as follows:

- Consolidation of determinations on a route where there is available capacity on that route equal to or greater than that currently allocated to the Australian carrier (Procedure 1); and
- Consolidation of determinations where the total amount of capacity held by the Australian carrier exceeds available capacity (Procedure 2).

**Procedure 1: Consolidation of determinations where there is available capacity equal to or greater than that currently allocated to the relevant Australian carrier**

Where available capacity on a route is equal to or greater than that currently allocated to a carrier, the carrier may apply to the Commission either under:

- subsection 12(3) for an allocation of capacity; or
- section 21 for a variation of the most recently issued determination on a particular route (see procedure 2).

**Application under subsection 12(3) of the Act**

1. A carrier applying under subsection 12(3) for an allocation of capacity to consolidate determinations must submit an application in accordance with section 14. The Commission will invite other applications for capacity on the route as required under subsection 12(1).
2. An application to consolidate determinations on a route must specify that the carrier, within 10 working days of a new determination, will apply for revocation of determinations which allocate capacity to it, and request the commencement date of the new allocation be the date of the revocation of the existing determinations.

3. Applications will be considered in accordance with the Policy Statement. If the criteria in paragraph 6.2 of the Policy Statement are satisfied (i.e. where there is only one applicant or where the available capacity is equal to or exceeds the total amount of capacity applied for), the Commission will apply the criteria in paragraph 4 in assessing the public benefit.
4. The Commission will issue the new consolidated determination under section 7 of the Act. The determination will include terms and conditions in accordance with section 15.
5. The new consolidated determination and conditions will take effect from the date of the revocation of the specified existing determinations.

### **Two or more applications for consolidation on the same route**

Where two or more carriers apply for consolidation of capacity on the same route, and there is insufficient capacity available to support the allocation of all the capacity sought by the carriers, the Commission will deal with the applications sequentially. Once a decision is made on the first application, the first applicant carrier will be required to apply for revocation of its other determinations on the route thus returning the capacity to the register. This will ensure there will be sufficient capacity to be allocated to a subsequent carrier applying for new capacity.

### **Procedure 2: Consolidation of determinations where the total capacity held by the relevant Australian carrier exceeds available capacity, including applications under section 21 of the Act**

Where a carrier holds multiple determinations on a route and the capacity held by the carrier exceeds capacity available for immediate allocation, the following procedure applies:

1. A carrier can apply under section 21 to vary the most recent determination on the route and therefore the determination with the latest expiry date (the first determination) to increase capacity to the total amount the carrier intends to retain. A determination not yet in effect may also be subject to variation under section 21.
2. The application should include a request to vary all other determinations on the route to change the expiry dates to the date when the variation to the first determination takes effect.
3. Before conducting a review of the determinations under section 10, the Commission will invite submissions in accordance with section 22. If no submission is received, or a submission does not contest the application, the Commission will apply the criteria in paragraph 4 of the Policy Statement. If a submission contesting the application is received, the Commission may apply the criteria in paragraph 5 of the Policy Statement. Should the Commission decide to apply the paragraph 5 criteria, it will advise the applicant carrier, and if the carrier decides to proceed with its application, it and other submitters will be invited to address the paragraph 5 criteria.
4. In relation to the capacity to be allocated, the Commission will conduct a review of the determinations under section 10 of the Act and may make a decision under section 24 or section 25. The expiry date of the consolidated determination, which will be the determination most recently issued to the carrier on the route, will remain unchanged.

## **General matters relating to both procedures**

### **1. Full utilisation of capacity**

Where the determinations sought to be consolidated have been in force and do not include a date for full utilisation of the capacity, the Commission will include a condition in the consolidated determination that the capacity should be utilised from the date the existing determinations expire or are revoked. This is consistent with the requirement that allocated capacity should be fully utilised by the relevant carrier unless the Commission has approved a particular date from which to fully utilise the capacity.

### **2. Separate consolidation of various types of capacity**

On routes on which an Australian carrier has determinations allocating different types of capacity – own-operated, code share, separate beyond capacity and/or freight – there could be benefits in consolidating the different types of capacity into separate determinations. This would make the revocation process and also future consolidations simpler. The Commission would consider any such cases on their merits, in consultation with the applicant.

### **3. Consolidation of determinations that have different conditions**

If all the existing determinations include corresponding conditions, the Australian carrier will need to apply for inclusion of the same conditions in the new determination. The Commission will approve conditions that are consistent with those in the existing determinations.

If an application seeks the inclusion of new conditions, including but not limited to code share, a carrier must request a variation. In some circumstances, determinations to be consolidated may have different conditions in relation to code sharing, the ability for allocated capacity to be used by subsidiaries, or for other reasons. In such circumstances, the carrier should apply for the conditions it wishes in the consolidated determination, including any new conditions not contained in its existing determinations.

The Commission will consider the request against the relevant criteria in the Policy Statement such as paragraphs 6.3, 6.4, and 3.6 in the case of code sharing. The Commission may subject the application to more detailed assessment using the additional criteria in paragraph 5. If the Commission has concerns in relation to any of the conditions requested, it will advise the carrier before making a final decision.

If the carrier does not include in its application a condition or conditions contained in one or more of the determinations sought to be consolidated, the Commission may include in the consolidated determination such condition(s) from existing determinations it considers relevant. The Commission will consult the applicant to ensure only the relevant code share arrangements are retained in the consolidated determination. For avoidance of doubt, the applicant is also advised to indicate in its application (in addition to the existing code share arrangements it desires to retain and proposed new code share arrangements), the approved code share arrangements which it no longer wishes to retain.

### **4. Withdrawing or changing applications**

If the Commission forms the view that it would not be of benefit to the public to approve the application, or particular parts of the application, it will advise the carrier and offer it the

opportunity to withdraw or change its application. A carrier may, at any time before a final decision is made, withdraw or change its application without prejudice.

#### **5. Start-up phase routes**

A carrier may apply for consolidation of capacity on a route that is still in the start up phase. If a submission is received contesting the application, the Commission will likely apply the criteria under paragraph 5 of the Policy Statement. Before doing so, it will advise the applicant and give it the opportunity to withdraw its application.

#### **6. Allocations of new capacity after consolidation**

If after having consolidated its determinations on a route, an airline is allocated additional capacity, this capacity will be allocated by a new determination, and not by a variation to its existing (consolidated) determination. Should the airline wish to have its new determination and its existing determination consolidated, it will need to apply to the Commission in accordance with these procedures.

14 March 2014