



Australian Government

International Air Services Commission

DECISION

Decision:	[2009] IASC 202
Variation of:	[2006] IASC 109
The Route:	New Zealand
The Applicant:	Qantas Airways Limited (Qantas) (ACN 009 661 901)
Public Register:	IASC/APP/200903

1 The application

1.1 On 11 March 2009, Qantas applied for a variation to Determination [2006] IASC 109, to permit Etihad Airways (Etihad) to code share on Qantas operated services between Australia and New Zealand.

1.2 Qantas is proposing to introduce code share arrangements with Etihad between Australia and New Zealand from 29 March 2009. Qantas plans to code share on Etihad services between Australia and Abu Dhabi and on services beyond to Jordan, Lebanon and Bahrain. In addition, Qantas proposes that Etihad would code share on services operated by Qantas between Australia and Auckland in New Zealand.

1.3 The code share arrangements will only apply to passenger traffic and will not involve the purchase of a block of seats by the marketing carriers i.e. it is a 'free sale' code share arrangement.

1.4 The Commission published a notice on 17 March 2009, inviting submissions about the application. No submissions were received. All material supplied by the applicant is filed on the Register of Public Documents.

2 Provisions of relevant air services arrangements

2.1 The Australia – United Arab Emirates air services arrangements permit any designated airline of Australia to enter into code sharing arrangements, as the marketing airline with any other airline. Code sharing by Qantas on Etihad services between Australia and Abu Dhabi does not involve the use of Australian capacity.

2.2 The Australia – New Zealand air services arrangements permit the designated airlines of both parties to enter into code share, blocked space or other co-operative marketing arrangements with any other airline as the marketing and/or operating airline, provided only that the airlines hold the authority to conduct air transport on the routes or segments concerned. The airlines must also make it clear to the purchaser at the point

of sale which airline will be the operating airline and with which airline/s the purchaser is entering into a contractual arrangement. Code sharing by a third-country airline constitutes the exercise of Australian capacity.

3 Delegate's assessment

3.1 In accordance with section 27AB of the *International Air Services Act* and regulation 3A of the *International Air Services Commission Regulations*, the delegate of the Commission considers the Qantas application.

3.2 When considering applications to vary determinations the Commission (or its delegate) must determine whether the determinations, as varied, would be of benefit to the public. Under section 6.3 of the Minister's policy statement, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity and no submission is received about the application, only the criteria in paragraph 4 of the policy statement are applicable. Under paragraph 4 of the Minister's Policy Statement, the use of Australian entitlements is of benefit to the public. For an established international carrier such as Qantas, this means that there is public benefit arising from the use of the capacity as proposed in the code share arrangements with Etihad.

3.3 Section 15(2)(e) of the Act requires the Commission to include a condition in determinations stating the extent to which the carrier may use allocated capacity in joint services with another carrier. Qantas has advised that the code share arrangement is a free sale arrangement whereby Etihad may sell any number of seats on each Qantas flight covered by the code share arrangements.

3.4 Several airlines operate between Australia and New Zealand and a number of airlines market seats under a code-share arrangement with an operating carrier. The evidence indicates a competitive market exists on the route. The Commission has previously authorised the use of capacity in joint services between Qantas and other airlines on the New Zealand route and the delegate will authorise the use of capacity in joint services with Etihad on this route. The delegate will vary the determination as requested by Qantas.

4 Decision: [2009] IASC 202

4.1 In accordance with section 24 of the Act, the delegate, on behalf of the Commission, varies Determination [2006] IASC 109, which allocates capacity on the New Zealand route by:

adding the following conditions:

- “the capacity may be used by Qantas to provide services jointly with Etihad in accordance with:

- the code share agreement between Qantas and Etihad dated 11 March 2009; or
- any subsequent code share agreement between Qantas and Etihad with the prior approval of the Commission;
- under any code share agreement with Etihad:
 - Qantas must price and sell its services on the route independently of Etihad; and
 - Qantas must not share or pool revenues on the route with Etihad.”

Dated: 25 March 2009

Dilip Mathew
Senior Adviser
Delegate of the IASC Commissioners