



Australian Government

International Air Services Commission

DECISION

Decisions:	[2009] IASC 212
Variation of:	[2008] IASC 122
The Routes:	India
The Applicant	Qantas Airways Limited (ACN 009 661 901) (Qantas)
Public Register File:	IASC/APP/200931

1 The application

1.1 On 18 September 2009, Qantas applied for a variation of Determination [2008] IASC 122 to permit any wholly-owned subsidiary of the Qantas Group to code share on the Singapore-Mumbai sector of Qantas' three weekly services between India and Australia. The new arrangements, under which Jetstar would code share on Qantas' services, are proposed to commence as soon as all necessary approvals have been received.

1.2 All public material supplied by the applicant is filed on the Register of Public Documents.

1.3 The Commission published a notice on 21 September 2009 inviting submissions about the application. No submissions were received.

2 Provisions of the relevant air services arrangements

2.1 The Australia - India air services arrangements allow airlines of either Party to enter into code share, blocked space or other cooperative marketing arrangements, as the marketing and/or operating airline with any other airline, including airlines of the same Party and of third parties.

3 Delegate's assessment

3.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (the Act) and regulation 3A of the *International Air Services Commission Amendment Regulations 2003 (No.1)*, the delegate of the Commission considers the Qantas application.

3.2 When considering applications to vary determinations, the Commission (or its delegate) must decide 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, the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public. Qantas is an

established international carrier which is clearly capable of obtaining the necessary approvals and of implementing its proposal. This means that there is public benefit arising from the use of the entitlements.

3.3 Section 15(2)(e) of the Act, the Commission must include a condition in determinations stating the extent to which the carrier may use that capacity in joint services with another carrier.

3.4 The International Air Services Commission Act 1992 (the Act) allows for allocated capacity to be used by a wholly owned subsidiary of another Australian carrier. Section 15(2)(ea) of the Act states that determinations may include a condition that, to the extent that any of the capacity is allocated to a particular Australian carrier, it may be used in whole or in part by any one or more of the following:

- (i) the carrier;
- (ii) a wholly-owned subsidiary of the carrier; and,
- (iii) if the carrier is a wholly-owned subsidiary of another Australian carrier – that other carrier.

3.5 The delegate notes that the Commission has previously authorised joint services between Qantas and its wholly-owned subsidiaries and will authorise the use of the capacity in joint services with Qantas in this case also. The delegate, on behalf of the Commission, will vary the determination as requested by Qantas.

4 Decision [2009] IASC 212

4.1 In accordance with section 24 of the Act, the delegate, on behalf of the Commission, varies Determination [2008] IASC 122, which allocates capacity on the India route, by:

adding the following condition to the Determination:

- the capacity may be used by any wholly-owned subsidiary of Qantas to provide services jointly with Qantas.

Dated: 1 October 2009

Michael Bird
Executive Director
Delegate of the IASC Commissioners