



**Australian Government**  

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**International Air Services Commission**

**DECISION**

**Decision:** [2011] IASC 220  
**Variation of:** [2011] IASC 114  
**The Route:** Chile  
**The Applicant:** Qantas Airways Limited (Qantas)  
(ACN 009 661 901)  
**Public Register:** IASC/APP/201125

## **1 The application**

1.1 On 29 September 2011, Qantas applied for a variation to Determination [2011] IASC 114, which allocates 1,119 seats of capacity to Qantas on the Chile route, to permit LAN Airlines to code share on Qantas services between Australia and Chile.

1.2 The Commission published a notice on 4 October 2011, inviting submissions about the application. One submission was received from an interested member of the public who objected to the application on the grounds that it will probably lead to reduced capacity on the route in the future.

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

## **2 Provisions of relevant air services arrangements**

2.1 Under the Australia – Chile air services arrangements, the designated airlines of Australia may provide services to and from Chile through code sharing, blocked space or other cooperative service arrangements with other airlines. When airlines of the two countries enter into code sharing arrangements with each other, the code share seats held out for sale are not counted against the capacity entitlements of the country which designated the marketing airline.

## **3 Relevant route characteristics**

3.1 The Australia-Chile route is a low volume route, ranking fifty first by size of Australia's international routes. 45,000 origin-destination passengers (Australian residents visiting Chile as their main destination and Chilean residents visiting Australia) travelled between the two countries in the year ended July 2011. This equates to some 430 passengers each way each week. When through passengers who travelled

on the route to and from countries beyond Australia and Chile are added the annual total rises to 72,500, but this is still only the equivalent of 745 passengers each way each week.

3.2 Origin-destination traffic recorded annual average growth of 8.1% over the last five years, but growth has flattened out over the last three years, averaging around 1% per annum. Total traffic on the route grew by an average of 0.6% per annum over the same period.

3.3 For a route of this size and modest growth record, it is already well served by LAN with up to seven A340-300 services a week and capacity will increase by around 50% when Qantas introduces its three services a week in March 2012. LAN operates via Auckland and Qantas plans to operate non-stop between Sydney and Santiago. In the year ended July 2011, LAN had a 40% share of origin-destination traffic and Qantas 37%. Third country airlines with a share of Australia-Chile traffic include Aerolineas Argentinas (6.1%) and Air New Zealand (3.9%).

### **Commission's consideration**

3.4 Under section 15(2)(e) of the Act a carrier cannot use allocated capacity to provide joint services with any other carrier without the prior approval of the Commission. Under paragraph 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, including to use Australian capacity in a code share arrangement with a foreign carrier, 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 Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals (4(b)(i)) and of implementing its proposals (4(b)(ii)) is of benefit to the public.

3.5 Under paragraph 6.4 of the Minister's policy statement, the Commission may apply the additional criteria set out in paragraph 5 of the policy statement where submissions are received about the application for variation, provided that those criteria were considered when the original application for allocation of capacity was made, or in the circumstances set out in paragraph 3.6.

3.6 Paragraph 3.6 provides that where capacity that can be used for code share operations is available under air services arrangements, the Commission would generally be expected to authorise applications for the use of capacity to code share. However, if the Commission has serious concerns that a code share application may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5.

3.7 In the case of this application to allow LAN to code share on Qantas, as the original application for allocation of capacity was not contested, the Commission was not required to assess the application against the paragraph 5 criteria. Having considered the characteristics of the Australia – Chile route, and in particular the low traffic volumes and growth, the Commission has concluded that the application does not raise serious concerns that the code share would not be of benefit to the public.

Accordingly, the Commission has not subjected the application to a paragraph 5 assessment.

3.8 The Commission will vary the determination as requested by Qantas.

#### **4 Decision [2011] IASC 220**

4.1 In accordance with section 24 of the Act, the Commission varies Determination [2011] IASC 114 by:

*adding* the following conditions:

- “the capacity may be used by Qantas to provide services jointly with LAN Airlines in accordance with:
  - the code share agreement dated 2 April 2003, as amended; or
  - any subsequent code share agreement between Qantas and LAN Airlines for operations on the Australia – Chile route with the prior approval of the Commission;
- under any code share agreement with LAN Airlines:
  - Qantas must price and sell its services on the route independently of LAN Airlines; and
  - Qantas must not share or pool revenues on the route with LAN Airlines;
- where the capacity is used to provide joint services on the route, nothing in this determination exempts Qantas from complying with the Australian Consumer Law. The airlines are required to take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight.”

Dated: 19 December 2011



Jill Walker  
Chairperson



Stephen Bartos  
Member

