



**Australian Government**  

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**International Air Services Commission**

**DECISION**

**Decision:** [2012] IASC 216  
**Variation of:** [2008] IASC 105, [2008] IASC 109, [2009] IASC 126,  
[2010] IASC 115 and [2012] IASC 103  
**The route:** South Africa  
**The applicant:** Qantas Airways Limited  
(ACN 009 661 901) (Qantas)  
**Public Register File:** IASC/APP/201212

## **1 The application**

- 1.1 Qantas applied to the Commission on 14 June 2012 seeking variation to determinations [2008] IASC 105, [2008] IASC 109, [2009] IASC 126, [2010] IASC 115 and [2012] IASC 103 to enable Qantas to code share with South African Airways (SAA) on the South Africa route until at least 31 March 2013.
- 1.2 All material supplied by the applicant is filed on the Register of Public Documents.

## **2 Commission's consideration**

### *Consideration of the International Air Services Commission Act 1992*

- 2.1 Section 10(2) of the Act provides that the Commission must conduct a review of a determination if it receives an application under section 21 for a determination to be varied. As Qantas has submitted such an application, the Commission must conduct a review of the determinations. Section 6(3)(a) of the Act prescribes that the review must be conducted in accordance with the International Air Services Policy Statement No.5 (the policy statement).
- 2.2 Before conducting a review, the Commission is required by section 22(1) of the Act to invite submissions about the review. This was done in accordance with section 52(b) by publishing the application on the Commission's webpage. No submissions were received. The Commission must, after conducting a review under section 10(2), make a decision on an application to vary a determination in accordance with sections 24, 25 and 26.
- 2.3 Qantas' application to vary the determinations falls within the definition of a 'transfer application' under the Act as it is an application for a variation of determinations that varies a condition stating the extent to which Qantas may use capacity under the determinations to provide joint international air services. As it is a transfer application, the decision must be made under section 25 of the Act.

- 2.4 Section 25 prohibits the Commission from making a decision varying the determinations in a way that varies the allocation of capacity if it is satisfied that the allocation, as so varied, would not be of benefit to the public. Section 26 then requires the Commission to apply the criteria set out in the policy statement in assessing the benefit to the public of a variation of an allocation of capacity.

#### *Consideration of the Policy Statement*

- 2.5 Paragraph 3.6 of the policy statement states that the Commission would generally be expected to authorise applications for use of capacity to code share, and provides that the Commission may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 if it has serious concerns that a code share application may not be of benefit to the public. In the present case, in view of the short duration of the authorisation sought, the Commission does not have serious concerns that this application may not be of benefit to the public. Accordingly, the application will not be subject to more detailed assessment using the additional criteria set out in paragraph 5.
- 2.6 Paragraph 3.7 requires, in the present case, the Commission to include a condition that Qantas should take all reasonable steps to ensure that passengers are informed, at the time of booking, that another carrier may operate the flight.
- 2.7 Paragraph 6.3 sets out the criteria against which the Commission is to assess whether an application would be of benefit to the public. In the present case, as Qantas has requested a variation to use Australian capacity in a code share arrangement with a foreign carrier and no submission has been received about the application, this paragraph prescribes that only the criteria in paragraph 4 are applicable.
- 2.8 Paragraph 4 states that an application is to be taken to be of benefit to the public so long as the Commission is satisfied that the carrier is reasonably capable of obtaining the necessary approvals to operate on the route and is reasonably capable of implementing their applications. In the present case, the Commission is satisfied that Qantas fulfils both these requirements. Therefore, the Commission concludes that the application is of benefit to the public.
- 2.9 As the Commission is not satisfied that the allocation, as so varied, would not be of benefit to the public, it must make a decision varying the determinations concerned in a way that gives effect to the variation requested in the transfer application.

### **3 Decision [2012] IASC 216**

- 3.1 In accordance with section 25(1) of the Act, the Commission, varies Determinations [2008] IASC 105, [2008] IASC 109, [2009] IASC 126, [2010] IASC 115 and [2012] IASC 103 to permit SAA to code share on Qantas' flights operated to and from South Africa until 31 March 2013, consistent with the Qantas/SAA code share and commercial agreement provided to the Commission, subject to the following conditions:
- any amendments to the code share agreement (including to Annex 1), or to the commercial agreement in so far as it affects the code share agreement, must be approved by the Commission;

- any new code share agreement, or commercial agreement, in so far as it affects the code share agreement must be approved by the Commission;
- Qantas must not share or pool revenues under any such agreement;
- Qantas and SAA must price and sell their services on the route independently;
- Qantas and SAA must withdraw from all IATA tariff coordination activities in relation to air fare levels between Australia and South Africa;
- nothing in this decision exempts Qantas from complying with the Australian Consumer Law and Qantas is required to take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight;
- the approval will remain in effect only while Qantas and SAA together operate at least ten return services per week on the South Africa route. Temporary reductions from this level may be permitted in exceptional circumstances, but only with the prior approval of the Commission; and
- Qantas must submit to the Commission reports each quarter on the number of code share seats available for sale and sold by it on each of SAA's operated services and by SAA on each of Qantas' operated services; and its quarterly yields per revenue passenger kilometre for all passenger classes on these services.

Dated: 12 July 2012



Jill Walker  
Chairwoman



Stephen Bartos  
Member

