



**Australian Government**  

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**International Air Services Commission**

**DECISION**

**Decision:** [2012] IASC 220  
**Variation of:** [2011] IASC 128 and [2012] IASC 102  
**The Route:** Japan  
**The Applicant:** Qantas Airways Limited (Qantas)  
(ACN 009 661 901)  
**Public Register:** IASC/APP/201222

**The IASC has decided to approve Qantas' application to allow Jetstar and Japan Airlines to continue to code share on the Japan route until 30 June 2017.**

## **1 The application**

1.1 On 23 November 2012, Qantas applied, under section 21 of the *International Services Commission Act 1992* (the Act) to vary the following Determinations to allow Jetstar and Japan Airlines (JAL) to continue to code share from 1 January 2013 to 30 June 2017 :

- [2007] IASC 108 (valid until 9 August 2013);
- [2011] IASC 128 (valid until 30 June 2017); and
- [2012] IASC 102 (valid until 22 February 2022).

1.2 On 27 November 2012, the Commission published a notice, in accordance with section 22 of the Act, inviting submissions about the application. No submissions were received.

1.3 On 30 November 2012, Qantas advised the Commission that it no longer seeks to vary Determination [2007] IASC 108.

1.4 Determination [2011] IASC 128 allocates to Qantas 45.6 B767-200 equivalent units of capacity per week in each direction on the Japan route. This allocated capacity was reduced to 43.6 B767-200 equivalent units per week under Decision [2012] IASC 205. Determination [2011] IASC 128 allows Jetstar, a wholly-owned subsidiary of Qantas, to utilise the capacity. It further allows Jetstar to codeshare with JAL until 31 December 2012, subject to certain conditions.

1.5 Determination [2012] IASC 102 allocates to Qantas unlimited passenger capacity on the Japan route to points in Japan other than Tokyo (Narita and Haneda Airports) and allows Jetstar, a wholly-owned subsidiary of Qantas, to utilise the capacity. Decision [2012] IASC 203 varied Determination [2012] IASC 102 to allow Jetstar to codeshare with JAL until 31 December 2012, subject to certain conditions. The variation was intended to implement the code share authorised by Decision [2010] IASC 210 which was not reflected in Determination [2012] IASC 102.

1.6 All documents supplied by the applicant, except commercial-in-confidence documents, are filed on the Register of Public Documents available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

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

2.1 The air services arrangements between Australia and Japan permit the designation of multiple Australian airlines. According to the Register of Available Capacity, there is unlimited capacity for designated Australian carriers to operate scheduled passenger services between Australia and points in Japan except for Narita Airport and Haneda Airport. Australian airlines may enter into co-operative marketing arrangements with airlines of either party or airlines of a third country.

## **3 Requirements under the Act and the Policy Statement**

3.1 Qantas' application seeks to vary conditions in Determinations [2011] IASC 128 and [2012] IASC 102 of a kind referred to in paragraph 15(2)(e) of the Act. In view of this, the application is a transfer application as so defined in subsection 4(2) of the Act.

3.2 The Commission considers that the present application for variation by Qantas is an application which has the effect of varying an allocation of capacity. This is because the condition proposed to be varied alters the way in which Qantas would utilise its allocation of capacity.

3.3 When considering transfer applications which propose to vary the allocation of capacity, the Commission must make a decision under subsection 25(2) of the Act, which reads as follows:

The Commission must not make a decision varying the determination in a way that varies, or has the effect of varying, an allocation of capacity if the Commission is satisfied that the allocation, as so varied, would not be of benefit to the public.

3.4 Subsection 6(3) of the Act requires the Commission to comply with any applicable policy statements made by the Minister under section 11 of the Act, and to have regard to Australia's international obligations concerning the operation of international air services.

3.5 Pursuant to section 11 of the Act, the Minister issued Policy Statement No. 5 dated 19 May 2004. The Minister's Policy Statement sets out the range of criteria

which the Commission is required to apply in assessing the benefit to the public of allocations of capacity. It also provides other guidance to the Commission in performing its functions.

3.6 Paragraph 3.6 of the Policy Statement provides that:

Where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise applications for use of capacity to code share. However, if the Commission has serious concerns that a code share application (or other joint service proposal) 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 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission.

#### **4 Commission's consideration**

4.1 In its application, Qantas asserts that the Commission makes an 'assumption that code share arrangements are intrinsically anti-competitive'. The Commission rejects this assertion. In some circumstances, code share arrangements benefit the public and have no adverse competition effects. In others, especially where contestability on a route is limited, a code share can potentially diminish competition. In considering applications for code share arrangements, the Commission examines the likely public benefits on a case by case basis, taking into account the characteristics of the route concerned.

4.2 When the Commission first permitted Jetstar and JAL to code share in 2007, the Commission considered that the code share arrangements would assist the viability and maintenance of frequency of the relevant services in the difficult circumstances prevailing in the industry at that time.

4.3 The operating environment has not improved since 2007. Origin-destination traffic<sup>1</sup> on the Australian-Japan route has been in steady decline since the late 1990s, contracting on average each year by 3.5% in the fifteen years since 1997, and by 6.8% annually in the five years since 2007. In 2012 (year ended September 2012) traffic grew by 4.2%, but this was after a fall of 14.5% the previous year (the year of the Fukushima nuclear disaster and serious floods in Queensland) and it remains below 2010 levels.<sup>2</sup>

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<sup>1</sup> Origin/destination traffic means Australian residents visiting Japan as their main destination and Japanese residents visiting Australia.

<sup>2</sup> Bureau of Infrastructure, Transport and Regional Economics: information derived from passenger card data from the department of Immigration and Citizenship. All annual traffic data is for the year ended 30 September.

4.4 The Commission considers that, at this time, there are no serious competition concerns with the code share between Jetstar and JAL. The “open skies” style agreement between Australia and Japan allows for unlimited capacity for own-operated services between any points in Australia and any points in Japan, except Tokyo’s Narita and Haneda airports (for which there is available capacity). Under the agreement, there is no capacity limit on code-sharing services. The Commission is of the view that Qantas’ proposed continuation of the Jetstar-JAL code share arrangement will not impede entry of other carriers on the route.

4.5 The Commission notes that in its draft determination of 14 December 2012 on the Qantas/ Jetstar joint venture coordination agreement, the ACCC considers that ‘it is unlikely that Jetstar Airways or JAL would commence overlapping services between Australia and Japan in the near future’. In other words, if their code share arrangement were not authorised, it is unlikely that JAL would establish direct services in competition with Jetstar on the Japan route.

4.6 The city pair routes on which Qantas is seeking approval for Jetstar to continue to code share with JAL all involve secondary gateways at one or both ends of the route. Compared with the Sydney-Tokyo route, these are “thin” routes and the Commission considers it unlikely that, absent the code share, JAL would compete with Jetstar over the period for which code sharing approval has been sought. Furthermore, the Commission considers that the code share arrangement between Jetstar and JAL should continue to assist the viability of the route and help at least maintain the frequency of services on the route.

4.7 Pursuant to paragraph 3.6 of the Policy Statement, as the Commission does not have serious concerns that continuation of the code share may not be of benefit to the public it will not subject the application to a more detailed assessment against the criteria in paragraph 5. This means that only the criteria in paragraph 4 of the Policy Statement are applicable.

4.8 Under paragraph 4 of the Policy Statement, the use of entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. Qantas, and its wholly-owned subsidiary (Jetstar), are established international carriers and are clearly capable of obtaining the necessary approvals to operate on the route and of implementing their applications.

4.9 Under paragraph 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.

4.10 The Commission has had regard to Australia’s international obligations concerning the operation of international air services on the route. The air services arrangements between Australia and Japan permit Australian airlines to enter into co-operative marketing arrangements with airlines of either party or airlines of a third country.

4.11 In view of the above, the Commission is satisfied that it would be of benefit to

the public for the code share arrangement between Jetstar and JAL to be continued as requested by Qantas.

## **5 Decision [2012] IASC 220**

**5.1** In accordance with section 25 of the Act, the Commission varies Determinations [2011] IASC 128 and [2012] IASC 102, as requested by Qantas, as follows:

### **for Determination [2011] IASC 128**

*add the following conditions:*

- Jetstar may use the capacity to provide services jointly with Japan Airlines until 30 June 2017 in accordance with:
  - the code share agreement of 9 February 2007, signed by Jetstar and Japan Airlines, as amended; or
  - any subsequent or further amended code share agreement between Jetstar and Japan Airlines for operations on the Australia - Japan route, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the code share agreement with Japan Airlines:
  - Jetstar must price and sell its services on the route independently of Japan Airlines; and
  - Jetstar must not share or pool revenues under any such agreement; and
- Jetstar must submit prior to the next Commission review of the code share arrangements, a report on the number of code share seats sold by Japan Airlines on Jetstar-operated services and Jetstar's yields per revenue passenger kilometre for all passenger classes on these services;

*delete the following conditions:*

- Jetstar may use the capacity to provide services jointly with Japan Airlines until 31 December 2012 in accordance with:
  - the code share agreement of 9 February 2007, as amended, with such additional conditions (if any) as the Commission may require prior to code share services commencing, or as varied except in relation to:

- Cairns–Tokyo, Gold Coast–Osaka, Cairns–Osaka and Gold Coast–Tokyo being the city pairs served; or
- any financial adjustment; and
- Jetstar must submit, prior to the next Commission review of the code share arrangements, a report on the number of code share seats sold by Japan Airlines on Jetstar–operated services between Cairns–Tokyo, Gold Coast–Osaka, Cairns–Osaka and Gold Coast–Tokyo and Jetstar’s yields per revenue passenger kilometre for all passenger classes on these services;

**for Determination [2012] IASC 102**

*in the conditions added by Decision [2012] IASC 203, substitute the phrase “until 31 December 2012” with “until 30 June 2017” and add the words “or further amended” after the words “- any subsequent...” in the first added condition.*

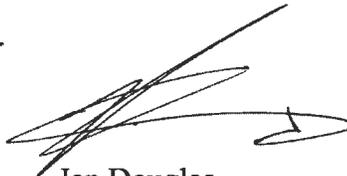
Dated: 24 December 2012



Jill Walker  
Chairperson



Stephen Bartos  
Member



Ian Douglas  
Member