



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2013] IASC 120
The Route: Singapore
The Applicant: Qantas Airways Limited (Qantas)
(ACN 009 661 901)
Public Register: IASC/APP/201307

The Commission's delegate allocates to Qantas 300 seats per week of capacity on the Singapore route to be used to exercise own stopover rights between Singapore and Colombo and permit Qantas to code share on Emirates' services between Singapore and Colombo.

1 The application

1.1 On 19 March 2013, Qantas applied for an allocation of 300 seats per week on the Singapore route to be used for exercising own stopover rights between Singapore and Colombo. Qantas proposes to use the capacity to provide code share services on Emirates' flights between Singapore and Colombo. Qantas states that the capacity will be fully utilised by 31 March 2014.

1.2 As required by section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 19 March 2013 inviting other applications for the capacity. No response was received in relation to the Qantas application. However, Virgin Australia has separately applied for allocation of 400 seats per week to be able to offer code share services on flights operated by Singapore Airlines to Colombo via Singapore.

1.3 All material supplied by the applicant is filed on the Commission's website (www.iasc.gov.au).

2 Relevant provisions of the air services arrangements

Under the Australia-Singapore air services arrangements, Australian carriers may enter into unrestricted codeshare, blocked space or other cooperative marketing arrangements with any other airline, including airlines of third parties. When exercising traffic rights between Singapore and Colombo in either direction, Australian carriers are restricted to 1,200 seats per week in each direction on an own stopover basis.

3 Delegate's consideration

3.1 In accordance with section 27AB of the Act and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission may consider the Qantas application. (For purposes of this determination, references to the Commission include the delegate of the Commission).

3.2 Qantas has applied for 300 seats per week out of 1,200 seats available for allocation. The Commission notes that Virgin Australia has applied for 400 of the 1,200 seats. Under paragraph 6.2 of Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), if the amount of available capacity exceeds the total amount of capacity applied for, only the criteria in paragraph 4 are applicable.

3.3 Paragraph 4.1 provides that the use of entitlements by Australian carriers that are reasonably capable of obtaining the necessary approvals and of implementing their applications is of benefit to the public. Qantas is an established international carrier which is capable of obtaining the necessary approvals and of implementing its proposals. This means that the use of the entitlements by Qantas is of benefit to the public.

3.4 In relation to the application to use the capacity for code sharing with Emirates, under paragraph 3.6 the Commission may apply the additional criteria in paragraph 5 if it has serious concerns that the code share may not be of benefit to the public. The Commission does not have such concerns and therefore has not applied the paragraph 5 criteria. The Commission notes that there are no direct services between Australia and Sri Lanka. However, there are a range of alternative hubs and other airlines available for passengers wishing to travel from points in Australia to Colombo.

3.5 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. The Commission has been provided a copy of the code share agreement between Qantas and Emirates.

3.6 The Commission notes that, on 27 March 2013, the Australian Competition and Consumer Commission (ACCC) authorised the Qantas-Emirates Master Coordination Agreement to coordinate air passenger and cargo transport operations and other related services. In its Determination, the ACCC considered that the available alternative airlines for travel between Australia and other points in Asia will constrain Qantas and Emirates from reducing or limiting growth in capacity on routes via Singapore and Bangkok.

3.7 Nothing in this decision should be taken as indicating either approval or disapproval by the ACCC. This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

4 **Determination allocating capacity on the Singapore route to Qantas ([2013] IASC 120)**

4.1 The delegate of the Commission makes, under section 7 of the Act, a determination in favour of Qantas, allocating 300 seats per week of capacity on the Singapore route to be used to exercise own stopover rights between Singapore and Colombo in accordance with the Australia-Singapore air services arrangements, subject to the conditions set out below.

4.2 The determination is for five years from the date of this determination.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 31 March 2014, or from such other date approved by the Commission;
- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- the capacity may be used to provide joint services with any wholly-owned subsidiary of the Qantas Group;
- Qantas is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- the capacity may be used by Qantas to provide services jointly with Emirates in accordance with:
 - the code share agreement between Qantas and Emirates dated 21 January 2013; or
 - any subsequent code share agreement between Qantas and Emirates, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the code share agreement with Emirates, Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking. Nothing in this determination exempts Qantas from complying with the Australian Consumer Law;
- under the arrangements with Emirates, Qantas may only price and market its services, or share or pool revenues/profits on the route jointly with Emirates as long as such practices are authorised under the *Competition and Consumer Act 2012* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal; and

- changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Singapore air services arrangements being withdrawn; or
 - has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of Qantas or be in a position to exercise effective control of Qantas, without the prior consent of the Commission.

Dated: 28 March 2013



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners.