



## Australian Government

### International Air Services Commission

#### DECISION

<b>Decision:</b>	<b>[2013] IASC 226</b>
<b>Variation of:</b>	<b>[2012] IASC 102</b>
<b>The Route:</b>	<b>Japan</b>
<b>The Applicant:</b>	<b>Qantas Airways Limited (Qantas) (ACN 009 661 901)</b>
<b>Public Register:</b>	<b>IASC/APP/201334</b>

**The Commission's delegate varies Determination [2012] IASC 102 allocating Qantas unlimited capacity for passenger services between points in Australia and points in Japan, other than Haneda Airport, in accordance with the terms of the Australia-Japan air services arrangements.**

#### 1 The application

1.1 On 17 October 2013, Qantas applied for a variation to Determination [2012] IASC 102, as varied by Decision [2012] IASC 220, for unlimited capacity for passenger services between points in Australia and points in Japan, other than Haneda Airport, in accordance with the terms of the Australia-Japan air services arrangements.

1.2 Determination [2012] IASC 102 (the Determination) was issued by the Commission's delegate on 23 February 2012 allocating in favour of Qantas unlimited passenger capacity between points in Australia and points in Japan other than Narita Airport and Haneda Airport. The Determination is valid for 10 years from the date of issue. It permits the allocated capacity to be used by Qantas to provide services jointly with any of its wholly-owned subsidiary (i.e. Jetstar Airways Pty Limited).

1.3 The Determination was varied by Decision [2012] IASC 203 to allow Jetstar to provide services jointly with Japan Airlines until 31 December 2012. The variation was intended to implement the code share arrangement authorised by Decision [2010] IASC 210 which was not reflected in the Determination. Subsequently, the Determination was further varied by Decision [2012] IASC 220 to allow Jetstar to continue to provide joint services on the route with Japan Airlines until 30 June 2017.

1.4 Qantas' current application follows changes to the Australia-Japan air services arrangements as reflected in the Register of Available Capacity. These changes allow designated Australian carriers to operate unlimited frequencies for both passenger and/or all-cargo services between points in Australia and any points in Japan, with the exception of:

- services where fifth freedom rights are exercised between third countries and Narita Airport; and
- services between Australia and Haneda Airport.

Previously, there had been restrictions on frequencies to Narita as well as Haneda airports.

1.5 In addition to the Determination sought to be varied, Qantas also holds the following determinations:

- [2011] IASC 128, as varied by Decisions [2012] IASC 205 and [2012] IASC 220, which allocates 43.4 B767-200 equivalent units of capacity per week in each direction; and
- [2013] IASC 104 which allocates 6.1 B767-200 equivalent units of capacity per week in each direction.

1.6 Qantas states in its application that it wishes to retain the capacity allocated in Determination [2013] IASC 104 to support services where fifth freedom rights are exercised to and from Narita Airport. Qantas also states that within 10 working days of the variation being issued, it will apply to the Commission to revoke Determination [2011] IASC 128.

1.7 On 18 October 2013, the Commission published a notice inviting submissions about the application. No submissions were received.

1.8 All public material supplied by the applicant is filed on the Commission's Register of Public Documents.

## **2 Relevant provisions of the air services arrangements**

2.1 Under the current air services arrangements between Australia and Japan, the designated airline(s) of each country may exercise third and fourth freedom traffic rights with unlimited frequencies and unlimited slots for both passenger and/or all-cargo services between any points in Japan and any points in Australia, with the exception of Haneda Airport. The air services arrangements further provide that the designated airline(s) of each country may exercise fifth freedom traffic rights on the routes to and from Narita Airport up to 79 units of capacity per week.

2.2 Australian airlines may enter into co-operative marketing arrangements with airlines of either party or airlines of a third country, subject to certain conditions.

## **3 Delegate's consideration**

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 Regulations 1992*, the delegate of the Commission may consider the application for

variation. (For the purposes of this decision, all references to the Commission include the delegate of the Commission).

3.2 An Australian carrier can apply under section 21 of the Act to have a determination varied. In this instance, Qantas has applied to have the Determination varied to have unlimited capacity for passenger services between points in Australia and points in Japan expanded to include Narita Airport.

3.3 Subsection 24(1) of the Act provides that the Commission must, having conducted a review to decide an application to vary a determination, make a decision: (a) confirming the determination; or (b) varying the determination in a way that gives effect to the variation requested. Subsection 24(2) states that 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 unless the Commission is satisfied that the allocation, as so varied, would be of benefit to the public.

3.4 Under section 26 of the Act, in assessing the benefit to the public of a variation of an allocation of capacity, the Commission is required to apply the criteria set out in any policy statement issued by the Minister under section 11.

3.5 Pursuant to section 11 of the Act, the Minister issued Policy Statement No. 5 dated 19 May 2004 (the Policy Statement). The 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 Under paragraph 4, the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carrier is not reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

3.7 The Commission notes that 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 expanded entitlements under the Australia-Japan air services arrangements.

3.8 The Commission notes that Qantas already has approval under this Determination, as varied by Decisions [2012] IASC 203 and [2012] IASC 220, for Japan Airlines to code share on Jetstar services until 30 June 2017.

#### 4 Decision [2013] IASC 226

4.1 In accordance with section 24 of the Act, the delegate, on behalf of the Commission, varies Determination [2012] IASC 102 (as varied by Decisions [2012] IASC 203 and [2012] IASC 220) to allocate to Qantas Airways Limited unlimited capacity for passenger services between points in Australia and points in Japan, other than Haneda Airport, in accordance with the terms of the Australia- Japan air services arrangements.

4.2 Qantas is required to apply to have Determination [2011] IASC 128 revoked within 10 working days of the date of this Decision.

Dated: 28 October 2013



Marlene Tucker  
Executive Director  
Delegate of the IASC Commissioners