



Australian Government

International Air Services Commission

DECISION

Decision: [2015] IASC 213
Variation of: [2014] IASC 102
The Route: New Zealand
The Applicant: Qantas Airways Ltd (Qantas)
(ABN 16 009 661 901)
Public Register File: IASC/APP/201526

The Commission's delegate varies [2014] IASC 102 to add conditions allowing LATAM to code share on flights operated by Jetstar Airways Pty Ltd.

1 The application

1.1 On 18 September 2015 Qantas applied for a variation to Determination [2014] IASC 102 (the Determination) to add conditions allowing the capacity to be used by Jetstar Airways Pty Ltd (Jetstar) for code share with LATAM Airlines Group (LATAM). Qantas states that LATAM intends to code share on selected flights operated by Jetstar from 25 October 2015.

1.2 As required by section 22 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 21 October 2015 inviting submissions about the proposed variation. No submissions were received.

1.3 All non-confidential material supplied by Qantas is available on the Commission's website (www.iasc.gov.au).

2 Relevant provisions of the air services arrangements

2.1 Under the Australia-New Zealand air services arrangements, Australian carriers may enter into code share and other cooperative marketing arrangements with any airline, including airlines of third countries, as the marketing and/or operating airline.

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 Under section 21 of the Act, an Australian carrier may, at any time, apply to have a determination varied. Under subsection 10(2) of the Act, the Commission must conduct a review of a determination if an Australian carrier applies for variation of a determination under section 21. However, before conducting a review under section 10, the Commission must, by notice, invite submissions about the review of the determination as required under section 22. As indicated above, the Commission published a notice about the application and invited submissions but no submissions were received.

3.3 Qantas' application seeks to vary the Determination to include a condition 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(1) of the Act and has been assessed in accordance with section 25.

3.4 Subsection 25(1) provides that the Commission must make a decision varying the determination in a way that gives effect to the variation requested, subject to subsection 25(2). Subsection 25(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 if the Commission is satisfied that the allocation, as so varied, would not be of benefit to the public.

3.5 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.

3.6 Paragraph 6.3 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement) provides that, subject to paragraph 6.4, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity, including to use the 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.

3.7 Under paragraph 3.6, 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 (the ACCC).

3.8 Qantas already has authorisation in the Determination to provide joint services with LATAM. The Commission does not have concerns that permitting LATAM to code share on services operated by Qantas' wholly-owned subsidiary, Jetstar, may not be of benefit to the public. In light of this, the Commission's delegate has decided to

add the conditions requested by Qantas.

3.9 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 Decision ([2015] IASC 213) authorising code sharing between Jetstar and LATAM

4.1 In accordance with section 25 of the Act, the Commission's delegate varies Determination [2014] IASC 113, as requested by Qantas, on the New Zealand route by:

Adding the following condition:

- the capacity may be used by Jetstar Airways Pty Ltd (Jetstar) to provide services jointly with LATAM Airlines Group (LATAM) in accordance with the code share agreement between Jetstar and LATAM signed on 10 September 2015;
- Qantas must apply to the Commission for approval of any proposed variations to the code share arrangement which would change the relevant commercial aspects of the respective code share arrangements from a free sale code share arrangement to a block space, or vice versa, or if Qantas proposes to add third country routes on which the airlines will code share in circumstances where Australian capacity would be utilised;

Deleting the following condition:

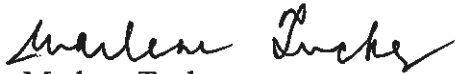
- changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – New Zealand air services arrangements being withdrawn; or
 - has the effect that another Australian 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.

And *replacing* the above condition with:

- changes in relation to the ownership and control of the airlines authorised to utilise the capacity are permitted except to the extent that any change:

- results in the designation of the airline as an Australian carrier under the Australia – New Zealand 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 the airline or be in a position to exercise effective control of the airline, without the prior consent of the Commission.

Dated: 16 October 2015



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners