



**Australian Government**  

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**International Air Services Commission**

**DECISION**

**Decision:** [2015] IASC 214  
**Variation of:** [2014] IASC 113  
**The Route:** Canada  
**The Applicant:** Qantas Airways Ltd (Qantas)  
(ABN 16 009 661 901)  
**Public Register File:** IASC/APP/201527

**The Commission varies Determination [2014] IASC 113 to permit American Airlines to code share on Qantas-operated services between Australia and Canada.**

## **1 The application**

1.1 Determination [2014] IASC 113 (the Determination) allocates to Qantas 1,092 seats of passenger capacity per week on the Canada route. On 28 September 2015, Qantas applied to the Commission for a variation to the Determination to add conditions permitting American Airlines to codeshare on Qantas operated services on the route.

1.2 The Commission published a notice on 29 September 2015, in accordance with section 22 of *International Air Services Commission Act 1992* (the Act), inviting submissions about the proposed variation. No submissions were received.

1.3 All non-confidential material supplied by the applicant is available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

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

Under the Australia-Canada air services arrangements, the designated airline or airlines of Australia may enter into cooperative arrangements for the purpose of code sharing on flights operated by any airline or airlines of Australia or Canada and/or of any third country.

## **3 Commission's consideration**

3.1 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.

3.2 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.

3.3 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.

3.4 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 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. Paragraph 4 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.

3.6 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).

3.7 The Commission notes that on 9 July 2015 the ACCC granted interim authorisation to Qantas and American Airlines so they can introduce additional joint services between Australia and the United States under an expansion of their alliance.

3.8 Currently, Air Canada is the only airline operating direct (non-stop) services between Sydney and Vancouver. The new Qantas service will result in more competition on the route and, in the Commission's view, enabling American Airlines to market and sell seats on the Qantas-operated service should help make the service more

sustainable.

3.9 In light of the above, the Commission does not have concerns that the code share may not be of benefit to the public.

3.10 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, the ACCC's final decision on the expanded alliance between Qantas and American Airlines. Should the ACCC decide not to grant final authorisation, the IASC will review Decision [2015] IASC 214.

#### **4 Decision ([2015] IASC 214) authorising code sharing between Qantas and American Airlines**

4.1 In accordance with section 25 of the Act, the Commission varies Determination [2014] IASC 113, as requested by Qantas, by adding the following conditions:

- the capacity may be used by Qantas to provide services jointly with American Airlines in accordance with Amendment Agreement No.5 to the 2011 Joint Business Agreement between Qantas and American Airlines dated 9 June 2015, or the New Code Share Agreement between Qantas and American Airlines dated 9 June 2015 which will supersede the above Amendment Agreement if final authorisation is received from the ACCC;
- Qantas must apply to the Commission for approval if it proposes to amend the above agreements, or enter into new agreements, that would result in a change in the code share agreement from a free sale to a block space arrangement, or vice versa, or would add third country routes involving the use of Australian capacity;
- in providing joint services, the airlines may not jointly price and market their services, or share or pool revenues/profits on the route, unless such practices are authorised under the *Competition and Consumer Act 2010* or otherwise authorised by the Australian Competition Tribunal, in the event of review by the Tribunal;
- the airlines must take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight. Nothing in this determination exempts the airlines from complying with the Australian Consumer Law; and
- 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 – Canada 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.

4.2 This decision takes effect from the date of this instrument.

Dated: 22 October 2015



IAN DOUGLAS  
Presiding Commissioner



JOHN KING  
Commissioner