



11 January 2013

Ms Marlene Tucker  
Executive Director  
International Air Services Commission  
PO Box 630  
Canberra ACT 2601

Dear Ms Tucker *Marlene*

**Submission in response to Qantas Airways' application for variation – Italy route**

I refer to Qantas Airways' (Qantas) application of 18 December 2012 for a variation of Determination [2010] IASC 104 to permit code share services with Emirates Airline (Emirates) on the Italy route.

Under the Australia-Italy air services arrangements, code share services on flights operated by airlines of third countries on the route are limited to 1,000 seats per week for carriers of both countries. At present, Qantas holds the entire Australian entitlement under Determinations [2007] IASC 113 (600 seats per week) and [2010] IASC 104 (400 seats per week) to support code share services with Cathay Pacific and British Airways respectively. Although not mentioned in its application, Qantas has publicly stated that both of these code share arrangements will be discontinued following the implementation of code share services on the route with Emirates.

Virgin Australia has a strong interest in commencing code share services to Italy with our partners Singapore Airlines and Etihad Airways, as outlined in our submission supporting our application for 300 seats of code share capacity in response to Qantas' application for renewal of Determination [2007] IASC 113. The prospect of negotiations with Italy to liberalise the code share entitlements under the air services arrangements appears extremely remote, with the Australian Government having made unsuccessful representations to the Italian Government in this regard as recently as late 2012. Subject to the Commission's decision in the abovementioned case, Virgin Australia will be unable to introduce code share services on the Italy route, in competition with Qantas and Emirates, for the foreseeable future.

We note that Qantas has requested the Commission assess its application for variation in accordance with the general criteria for assessing benefit to the public as provided in paragraph 4 of the Minister's Policy Statement. Virgin Australia asserts that this application must be assessed through an examination of the additional criteria for assessing benefit to the public specified in paragraph 5 of the Minister's Policy Statement. These additional criteria are invoked by paragraph 6.4, which provides that the Commission may apply the paragraph 5 criteria in circumstances outlined in paragraph 3.6. Paragraph 3.6 states:

"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 Consumer and Competition Commission.”

It is relevant to note that in its assessments of the effect that the proposed alliance between Qantas and Emirates would have on competition for the supply of international air transport services between Australia and United Kingdom/Europe, the Australian Consumer and Competition Commission’s Draft Determination of 20 December 2012 specifically highlights that the restriction on capacity for code share services with third country carriers under the Australia-Italy air services arrangements may represent a barrier to entry or expansion for some airlines on the route.

Emirates has a strong presence on the Italy route, offering up to 84 services per week between Australia and Dubai, and up to 21 services to Milan and up to 14 services to Rome from Dubai each week under the Northern Winter 2012 scheduling season. In 2011, Emirates held the highest share of passengers on the route at 37 per cent, followed by Qantas at 17 per cent. In light of the fact that Qantas is holding all of the code share capacity, which effectively prevents the introduction of any competing code share services to Italy by another Australian airline, and with Emirates and Qantas enjoying more than 50 per cent of the passenger market share on the route in 2011, Virgin Australia expects that the Commission would have serious concerns that Qantas’ application for a variation of Determination [2010] IASC 104 to permit code share services with Emirates may not be of benefit to the public. This is underscored by the fact that average airfares on the route have risen during the period in which Qantas has been the sole Australian carrier offering code share services to Italy in partnership with carriers which have a weaker presence on the route compared with Emirates. If Qantas is permitted to introduce code share services with Emirates, as the dominant carrier on the route, it is likely that airfares will continue to rise, to the detriment of Australian consumers and the Australian tourism industry.

As the Commission’s decision regarding Qantas’ application for renewal of Determination [2007] IASC 113 will have a significant bearing on the long-term public benefits generated by air services on the Italy route, it is highly relevant to Qantas’ application for variation of Determination [2010] IASC 104. Virgin Australia therefore anticipates that the Commission will only be in a position to determine which criteria are applicable to its consideration of the latter application once a decision in the former case has been reached.

We would be pleased to provide further information in relation to any of our comments above to assist the Commission’s consideration of this matter.

Yours sincerely

A handwritten signature in black ink that reads "Jane McKeon".

Jane McKeon  
**Group Executive**  
**Government and International Relations**