



Australian Government

International Air Services Commission

DECISION

Decision: [2017] IASC 217
Variation of: [2012] IASC 102
The Route: Japan
The Applicant: Qantas Airways Ltd
(ABN 16 009 661 901)
Public Register File: IASC/APP/201741

The Commission varies Determination [2012] IASC 102 to permit the use of the capacity on the Japan route for code sharing between Jetstar and Japan Airlines. The permission is valid for the duration of the determination from the date of issue of this decision.

1 The application

1.1 On 14 August 2017, the International Air Services Commission (the Commission) received an application from Qantas Airways Limited (Qantas) seeking to vary Determination [2012] IASC 102 (the Determination), as amended, to permit the utilisation of the capacity for code share services between Jetstar Airways Pty Limited (Jetstar) and Japan Airlines. The proposal is for Japan Airlines to offer code share services, as marketing carrier, on flights operated by Jetstar on the following city pair routes: Cairns-Tokyo (Narita) vv¹; Cairns-Osaka (Kansai) vv; and Gold Coast-Tokyo (Narita) vv. Qantas provided a copy of the confidential code share agreement between Jetstar and Japan Airlines.

1.2 The Determination allocates to Qantas unlimited passenger capacity on the Australia-Japan route and is valid until 22 February 2022. The Determination permits, in addition to Qantas, another Australian carrier which is a wholly-owned subsidiary of Qantas to use the capacity (which in this case is Jetstar). The Determination was amended by Decision [2017] IASC 220 to permit Jetstar to use the capacity for code share with Japan Airlines until 30 June 2017. The current application seeks to extend the authorisation for the use of the capacity to provide code share services between Jetstar and Japan Airlines on the specific city pair routes indicated above.

1.3 On 14 August 2017, the Commission published a notice, in accordance with section 22 of the Act, inviting submissions about the application for variation to enable Japan Airlines to code share on flights operated by Qantas. No submissions were received. All non-confidential material supplied by the applicant is available on the Commission's website, www.iasc.gov.au.

¹ vv means vice-versa

2 Relevant provisions of the air services arrangements

2.1 The air services arrangements between Australia and Japan permit the designation of multiple Australian airlines. According to the Register of Available Capacity, there is unlimited capacity for designated Australian carriers to operate scheduled passenger services between Australia and points in Japan except for Haneda Airport. The air services arrangements permit designated airlines of Australia to operate up to seven frequencies per week to and from Haneda Airport. Currently, all seven frequencies to and from Haneda Airport have been allocated to Qantas.

2.2 Designated Australian airlines may enter into co-operative marketing arrangements with designated airlines of either party or airlines of a third country, subject to approvals of the aeronautical authorities of both countries.

3 Requirements under the Act and the Policy Statement

3.1 The Qantas application seeks to vary the Determination to include a condition permitting Jetstar to use the capacity to provide code share services with Japan Airlines. Effectively, Qantas is seeking a variation 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 defined in subsection 4(1) of the Act².

3.2 Decisions concerning transfer applications have to be assessed in accordance with section 25 of the Act. 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.

3.3 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.

3.4 Pursuant to section 11 of the Act, then Minister for Transport and Regional Services, the Hon. John Anderson MP issued Policy Statement No. 5 (hereinafter referred to as the Policy Statement) dated 19 May 2004. 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.

3.5 Paragraph 6.3 of 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 of the Policy Statement provides that the general criteria against which the benefit to the public is to be assessed by the Commission

² Transfer application is defined in ss 4(1) of the Act to include an application, by an Australian carrier to whom a determination allocates capacity, for a variation that varies, or has the effect of varying, one or more conditions of a kind referred to in paragraph 15(2)(e).

in considering a review of a determination, are as follows: the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their proposals.

3.6 Paragraph 6.4 provides, in part, that the Commission may apply the criteria in paragraph 5 in the circumstances set out in paragraph 3.6 of the Policy Statement.

3.7 Under paragraph 3.6, where capacity that can be used for code share operations is available under the relevant 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).

4 Commission's consideration

4.1 The Commission assessed the code share application carefully. It considered a number of data including the confidential information provided by Qantas in support of the code share application and aviation data on the Australia-Japan route obtained from the Bureau of Infrastructure and Regional Economics (BITRE).

4.2 The Commission notes that since its last review in 2012 of the Jetstar-Japan Airlines code share, the Australia-Japan route has been characterised by the following in recent times:

- In the last five years (2012-2017), origin-destination (OD) traffic on the Australian-Japan route, has steadily increased at an average growth of 11%. However, prior to 2012, OD traffic was on a steady decline contracting between 3 to 6 % annually.
- Short-term arrivals from Japan into Australia steadily declined in the last 15 years and picked up only in the last two years with over 13% increase in both 2016 and 2017. That said, the size of the visitor market from Japan considerably decreased from 722,000 in 2001 to just 422,000 in 2017 (much less than what it was in 1997, at 1.5 million).
- All Nippon Airways, a Star alliance partner, re-entered the Australia-Japan route in December 2015 operating a daily service between Sydney and Tokyo (Haneda) using B787 aircraft.
- Travel via third countries like Singapore, Hong Kong/ China, Malaysia etc has allowed third country airlines to obtain a larger market share of passenger traffic between Australia and Japan providing competition to the direct services offered by Qantas, Jetstar, Japan Airlines and All Nippon Airways.

4.3 As indicated above, the proposed code share between Jetstar and Japan Airlines on the route is limited to the following city pair routes, all involving secondary gateways at one or both ends of the route: Cairns-Tokyo (Narita) vv; Cairns-Osaka (Kansai) vv; and Gold Coast-Tokyo (Narita) vv. Compared with the Sydney-Tokyo route, these city pair routes are 'thin' routes. They are predominantly a tourism market and as such vulnerable to various

factors like economic circumstances, political uncertainty, depreciation of the Australian dollar etc.

4.4 Japan Airlines operates a daily service between Sydney and Tokyo (Narita). The Commission considers it unlikely for Japan Airlines to operate services on the city pair routes (Cairns/Gold Coast and Tokyo/ Osaka) for which code sharing approval has been sought. In light of this, the Commission considers the proposed code share would have minimal impact on competition on the broader Australia-Japan market.

4.5 The Commission further considers that the code share arrangement between Jetstar and Japan Airlines would continue the viability of the city pair routes operated by Jetstar and will provide support to maintaining the frequency of services on these city pair routes.

4.6 The Commission notes there are a number of major carriers offering either own-operated or code share services between Japan and various points in Australia, thus providing various travel options to consumers.

4.7 The Qantas Group (Qantas/Jetstar) has the largest market share of passenger traffic. Together, Qantas and Jetstar operate up to 42 services a week in each direction. Japan Airlines operate daily services between Tokyo (Haneda) and Sydney while All Nippon Airways operate daily services between Tokyo (Narita) and Sydney.³

4.8 There are a number of major airlines offering services between Australia and Japan via their home cities like Singapore Airlines and Scoot, Cathay Pacific, Malaysia Airlines and Air Asia X, Thai Airways, Korean Air and the Chinese carriers. These mid-point carriers have obtained a larger share of the market.

4.9 In the Commission's view, allowing Japan Airlines to code share on Jetstar-operated services between Australia and Japan will add to the number of carriers that market services on the route and is unlikely to have a detrimental impact on competition.

4.10 Pursuant to paragraph 3 of the Policy Statement, the Commission does not have serious concerns that the proposed code share may not be of benefit to the public. In view of this, the Commission did not specifically consult the ACCC and did not assess the application against the additional criteria in paragraph 5 of the Policy Statement. The Commission assessed the application against the criteria in paragraph 4.

4.11 Under paragraph 4 of the Policy Statement, the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their proposals. The Commission notes that Jetstar is an established international carrier which is clearly capable of obtaining the necessary regulatory approvals and of implementing its proposed services.

4.12 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Paragraph 15(2)(e) requires the inclusion of a condition stating the extent to which the carrier may use that capacity in joint services with another carrier.

³ Northern Summer 2017 International Airlines Timetable Summary (26 March 2017 - 28 October 2017)

4.13 The Commission has decided to add conditions permitting the use of the capacity for the provision of code share services between Jetstar and Japan Airlines on the Japan route in accordance with the Australia-Japan air services arrangements. As required in paragraph 3.7 of the Policy Statement, the Commission has also decided to include a condition requiring the airlines to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flight.

4.14 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.

5 Decision varying Determination [2012] IASC 102 allocating capacity to Qantas on the Japan route ([2017] IASC 217)

5.1 In accordance with section 25 of the Act, the Commission varies Determination [2012] IASC 102 which allocates to Qantas capacity on the Japan route, by:

adding the following conditions to the Determinations:

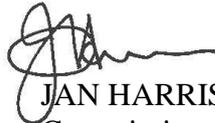
- Jetstar may use the capacity to provide code share services with Japan Airlines in accordance with the code share agreement between Jetstar and Japan Airlines made on 9 February 2007, as amended, and the air services arrangements between Australia and Japan;
- Qantas or Jetstar must apply to the Commission for approval of any proposed variations to the code share agreement between Jetstar and Japan Airlines which would change the relevant commercial aspects of the agreement from a free sale code share arrangement to a block space, or vice versa, or if there is a proposal to add third country routes on which the airlines will code share where Australian capacity entitlements will be used for services on that route;
- in providing code share (or joint) services, Jetstar and Japan Airlines may not jointly price and market their services, or share or pool revenues/profits on the route, unless such practices are authorised by the ACCC or otherwise by the Australian Competition Tribunal, in the event of review by the Tribunal;
- to the extent that the capacity is used to provide code share (or joint) services on the route, 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
- Qantas or Jetstar must submit prior to the next Commission review of the code share arrangements, a report on the number of code share seats sold by Japan Airlines on Jetstar-operated services and Jetstar's yields per revenue passenger kilometre for all passenger classes on these services.

5.2 This decision comes into effect from the date of issue and is valid for the duration of Determination [2012] IASC 102.

Dated: 4 September 2017



IAN DOUGLAS
Chairperson



JAN HARRIS
Commissioner