



Australian Government

International Air Services Commission

DECISION

Decisions:	[2008] IASC 210 and [2008] IASC 211
Variation of:	[2004] IASC 101 (China) and [2006] IASC 109 (New Zealand)
The Routes:	China and New Zealand
The Applicant	Qantas Airways Limited (ACN 009 661 901) (Qantas)
Public Register File:	IASC/APP/200809

1 The application

1.1 On 16 May 2008, Qantas applied for a variation of Determinations [2004] IASC 101 (China route) and [2006] IASC 109 (New Zealand route) to authorise China Eastern Airlines (China Eastern) to code share on Qantas-operated services on the China and New Zealand routes. Under the proposed arrangements, China Eastern would sell seats on a free-sale basis on three weekly Qantas services between Beijing and Sydney, and on daily Qantas services between Sydney and Auckland, and between Melbourne and Auckland.

1.2 Qantas advised that the previous code share arrangement on the China route, whereby Air China code shared on Qantas' Sydney – Beijing services, had ceased at the end of February 2008. It therefore sought removal of the existing Commission authorisation of that arrangement.

1.3 Under the new arrangements, Qantas would also offer access to additional points in China by placing its code on certain China Eastern domestic flights. These connect with Qantas' Shanghai services.

1.4 The Commission published a notice on 22 May 2008 inviting submissions about the application. No submissions were received. All public material supplied by the applicant is filed on the Register of Public Documents.

2 Provisions of the relevant air services arrangements

2.1 The Australia - China air services arrangements allow the designated airlines of the two countries to enter into co-operative marketing arrangements with each other, including code-sharing.

3 Delegate's assessment

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*

Amendment Regulations 2003 (No.1), the delegate of the Commission considers the Qantas application.

3.2 When considering applications to vary determinations, the Commission (or its delegate) must decide whether the determinations, as varied, would be of benefit to the public. Under section 6.3 of the Minister's policy statement, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity and no submission is received about the application, only the criteria in paragraph 4 of the policy statement are applicable. Under paragraph 4, the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public. For an established international carrier such as Qantas, this means that there is public benefit arising from the use of the entitlements.

3.3 Under section 15(2)(e) of the Act, the Commission must include a condition in determinations stating the extent to which the carrier may use that capacity in joint services with another carrier. Qantas has advised in its application that the code share arrangement is a free sale arrangement whereby China Eastern may sell any number of seats on each Qantas flight.

3.4 The delegate considers that there is likely to be no adverse impact on competition in the Australia – China market from the arrangements. The new arrangement applies to only three weekly services per week between Beijing and Sydney. The delegate also notes that Qantas had previously placed its code on China Eastern's Sydney – Shanghai and Melbourne – Shanghai services. This latter arrangement ended in March 2008 when Qantas increased its Shanghai services to daily flights. Similarly, the delegate considers there is unlikely to be any adverse impact on competition in the highly competitive Australia – New Zealand market from the proposed arrangements between Qantas and China Eastern on the New Zealand route.

3.5 Qantas has undertaken to provide the finalised code share agreement to the Commission as soon as possible. The delegate will authorise the use of the capacity in joint services with China Eastern, subject to Qantas providing the finalised code share agreement to the Commission before the commencement of the services.

3.6 The delegate notes that the previous code share arrangement with Air China is no longer operational and will remove authorisation for this superseded arrangement from Determination [2004] IASC 101 as requested by Qantas.

3.7 The delegate, on behalf of the Commission, will vary Determinations [2004] IASC 101 and [2006] IASC 109 on the China and New Zealand routes respectively, as requested by Qantas.

4 Decision [2008] IASC 210

4.1 In accordance with section 24 of the Act, the delegate, on behalf of the Commission, varies Determination [2004] IASC 101, which allocates capacity on the China route, by:

removing the following conditions from the Determination:

- the capacity may be used by Qantas to provide services jointly with Air China in accordance with:
 - the finalised code share agreement between Qantas and Air China, subject to the finalised code share agreement being approved by the Commission, with such additional conditions (if any) as the Commission may require, prior to the commencement of services;
 - or any subsequent code share agreement between Qantas and Air China for operations on the Australia-China route with the prior approval of the Commission;
- under any code share agreement with Air China:
 - Qantas must price and sell its services on the route independently of Air China;
 - Qantas must not share or pool revenues on the route with Air China;
 - Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking.

adding the following conditions to the Determination:

- the capacity may be used by Qantas to provide services jointly with China Eastern in accordance with:
 - the finalised code share agreement between Qantas and China Eastern, subject to the finalised code share agreement being approved by the Commission, with such additional conditions (if any) as the Commission may require, prior to the commencement of services;
 - or any subsequent code share agreement between Qantas and China Eastern for operations on the Australia - China route with the prior approval of the Commission;
- under any code share agreement with China Eastern:
 - Qantas must price and sell its services on the route independently of China Eastern;
 - Qantas must not share or pool revenues on the route with China Eastern;
 - Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of

booking.

5 Decision [2008] IASC 211

5.1 In accordance with section 24 of the Act, the delegate, on behalf of the Commission, varies Determination [2006] IASC 109, which allocates capacity on the New Zealand route by:

adding the following conditions to the Determination:

- the capacity may be used by Qantas to provide services jointly with China Eastern in accordance with:
 - the finalised code share agreement between Qantas and China Eastern, subject to the finalised code share agreement being approved by the Commission, with such additional conditions (if any) as the Commission may require, prior to the commencement of services;
 - or any subsequent code share agreement between Qantas and China Eastern for operations on the Australia - China route with the prior approval of the Commission;
- under any code share agreement with China Eastern:
 - Qantas must price and sell its services on the route independently of China Eastern;
 - Qantas must not share or pool revenues on the route with China Eastern;

Dated: 4 June 2008

Michael Bird
Executive Director
Delegate of the IASC Commissioners