



**Australian Government**  
**International Air Services Commission**

**DECISION**

**Decision:** [2017] IASC 220  
**Variation of:** [2014] IASC 102  
**The Route:** New Zealand  
**The Applicant:** Qantas Airways Ltd  
(ABN 16 009 661 901)  
**Public Register File:** IASC/APP/201764

**The Commission varies Determination [2014] IASC 102 to permit the use of the capacity on the New Zealand route for code sharing between Qantas and SriLankan Airlines. The permission is valid for the duration of the determination commencing from the date of issue of this decision.**

## **1 The application**

1.1 On 16 November 2017, the International Air Services Commission (the Commission) received an application from Qantas Airways Limited (Qantas) seeking to vary Determination [2014] IASC 102 (the Determination), as amended, to enable SriLankan Airlines to code share on flights operated by Qantas on the New Zealand route from 18 December 2017.

1.2 The Determination, as amended, allocates to Qantas unlimited passenger and freight capacity on the New Zealand route. The Determination permits the capacity to be used by either Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas and for the provision of joint services between Qantas and its wholly-owned subsidiary. The Determination also permits the use of the capacity for code share services between Qantas and the following airlines: Air Tahiti Nui, British Airways, China Eastern Airlines, China Southern Airlines, Emirates, Japan Airlines and LATAM Airlines. Additionally, the Commission has also permitted Jetstar to provide code share services with Emirates, American Airlines and LATAM Airlines on the route.

1.3 On 16 November 2017, the Commission published a notice, in accordance with section 22 of the Act, inviting submissions about the application for variation to enable SriLankan 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](http://www.iasc.gov.au).

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

2.1 Paragraph 7(2)(aa) of the Act requires the Commission not to allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s). This also means that any variations made to an existing allocation of capacity must not be contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 Under the Australia-New Zealand air services arrangements, a designated airline of Australia may determine the frequency and capacity of services operated. The Australian designated airline may also enter into code-share, blocked space or other cooperative marketing arrangements, as the marketing and/or operating airline, provided they hold the appropriate authority or authorities to conduct air transport on the routes or segments concerned.

## **3 Commission's assessment**

3.1 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.

3.2 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.

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.

3.6 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 Qantas is an established international carrier which is capable of obtaining the necessary regulatory approvals and of implementing their proposed services.

3.7 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. 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).

3.8 The Commission notes there are a number of major carriers offering either own-operated or code share services between various points in Australia and New Zealand, thus providing a number of travel options to consumers. Air New Zealand operates up to 148 weekly services while Qantas operates up to 119 weekly services. Virgin Australia operates up to 90 weekly services while Jetstar operates up to 60.<sup>1</sup>

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

3.10 In light of the above, the Commission does not have concerns that the proposed code share services may not be of benefit to the public. For this reason, it did not specifically consult the ACCC and did apply the additional criteria set out in paragraph 5 of the Policy Statement.

3.11 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.

3.12 The Commission has decided to add conditions permitting the use of the capacity for the provision of code share services between Qantas and SriLankan Airlines on the New Zealand route in accordance with the Australia-New Zealand air services arrangements. As is its normal practice, 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.

3.13 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 varying Determination [2014] IASC 102 allocating capacity to Qantas on the New Zealand route ([2017] IASC 220)**

4.1 In accordance with section 25 of the Act, the Commission varies Determination [2014] IASC 102 which allocates to Qantas unlimited passenger and freight capacity on the New Zealand route, by:

*adding* the following conditions to the Determination:

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<sup>1</sup> 2017 Northern Summer International Airlines Timetable Summary

- The capacity may be used by Qantas to provide code share services with SriLankan Airlines in accordance with the code share agreement between the Qantas and SriLankan Airlines made on 16 September 2014 and the air services arrangements between Australia and New Zealand.
- Qantas must apply to the Commission for approval of any proposed variations to the code share agreement between Qantas and SriLankan 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 the airlines propose to add third country routes on which the airlines will code share where Australian capacity entitlements will be used for services on that route.
- To the extent that the capacity is used to provide code share 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.

4.2 This decision comes into effect from the date of issue and is valid for the duration of Determination [2014] IASC 102.

Dated: 7 December 2017



IAN DOUGLAS  
Chairperson



JAN HARRIS  
Commissioner



KAREN GOSLING  
Commissioner