



Australian Government

International Air Services Commission

DECISIONS

The Route: Singapore
The Applicant: Qantas Airways Limited
(ABN 16 009 661 901)

Decision: [2018] IASC 233
Variation of: [2007] IASC 116
Public Register File: IASC/APP/201858

Decision: [2018] IASC 234
Variation of: [2017] IASC 131
Public Register File: IASC/APP/201859

The Commission's delegate varies Determinations [2007] IASC 116 and [2017] IASC 131 to permit the use of the capacity on the Singapore route for code sharing between Qantas and KLM. The permission is valid for the duration of the determination commencing from 26 October 2018.

1 The application

1.1 On 10 October 2018, Qantas Airways Limited (Qantas) applied to the International Air Services Commission (the Commission) to vary Determination [2007] IASC 116, as amended, and its Renewal Determination [2017] IASC 131 to enable KLM Royal Dutch Airlines (KLM) to code share on flights operated by Qantas on the Singapore route. Qantas provided a copy of its code share agreement with KLM, on a confidential basis. Qantas further indicated that the code share services would be available for booking from 24 October 2018 for travel from 30 October 2018.

1.2 The Determinations allocate to Qantas unlimited passenger capacity and frequency on the Singapore route. The Determinations permit the capacity to be used by either Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas, Jetstar Airways Pty Ltd (Jetstar) and for joint services between them.

1.3 The 2007 Determination permits code share services between Qantas and the following airlines: British Airways, Air Malta, Jet Airways and Air France¹. Subsequent variations to the 2007 Determination permit code share services between Qantas and the following airlines: Iberia Airlines (Decision [2007] IASC 214); Japan Airlines (Decision [2009] IASC 206); China Eastern (Decision [2010] IASC 202); Finnair (Decision [2011] IASC 202); Emirates (Decision [2013] IASC 205); Bangkok Airways (Decision [2014] IASC

¹ The code share with Air France ceased in 2013 and was resurrected in 2018.

227); Sri Lankan Airlines (Decision [2014] IASC 231); Fiji Airways (Decision [2017] IASC 209); LATAM Airlines (Decision [2017] IASC 219) and Air France (Decisions [2018] IASC 215 and 216). The Commission has also authorised the use of the capacity for the provision of code share services between Jetstar and Emirates (Decision [2014] IASC 222); and for Jetstar to code share with Finnair (Decision [2017] IASC 209).

1.4 As required under section 22 of the *International Air Services Commission Act 1992* (the Act), the Commission published, on 11 October 2018, a notice inviting submissions about the application for variation to enable KLM to code share on Qantas services. No submissions were received. All non-confidential material supplied by the applicant is available on the Commission's website, www.iasc.gov.au.

2 Relevant provisions of the air services arrangements

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

2.2 The Australia-Singapore air services arrangements provide for unrestricted capacity for air services between the two countries which means designated airlines may determine the frequency and capacity of passenger and all-cargo services on the route.

2.3 Additionally, Australian carriers may enter into unrestricted code share, blocked space or other cooperative marketing arrangements with any other airline, including airlines of third parties.

3 Delegate's assessment

3.1 In accordance with section 27AB of the Act and regulation 10 of the International Air Services Commission Regulations 2018, the delegate of the Commission may consider the application by Qantas. (For purposes of this instrument, all references to the Commission include the delegate of the Commission).

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 In accordance with section 11 of the Act, the Minister for Infrastructure and Transport, the Hon. Michael McCormack MP, made the International Air Services Commission Policy Statement 2018 (the Policy Statement) which came into effect on

28 March 2018. The Policy Statement sets out the criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.6 Section 18 of the Policy Statement which specifically deals with ‘transfer applications’ such as this one, effectively provides that, in assessing whether the variation requested would not be of benefit to the public for purposes of subsection 25(2) of the Act, the Commission is to have regard to certain matters including the ‘reasonable capability criterion’ in section 8 of the Policy Statement and may have regard to any of the additional criteria set out in section 9 of the Policy Statement that it considers to be relevant.

3.7 Under the ‘reasonable capability criterion’ in section 8 of the Policy Statement, the Commission is to assess the extent to which an Australian carrier is reasonably capable of obtaining any licences, permits or other approvals required to operate on and service the route and of using the capacity allocated under the determination. The Commission’s delegate notes that Qantas is an established international carrier and finds that it is reasonably capable of obtaining any licences, permits or other regulatory approvals required to operate on and service the route and of using the capacity allocated on the route.

3.8 The delegate notes there are a number of major carriers offering either own-operated or code share services between Singapore and various points in Australia, thus providing various travel options to consumers. Qantas and Jetstar which offer direct services on the Singapore route, operate up to 49 and 10 weekly services, respectively. Both Australian carriers also provide code share services with various airlines. Jetstar Asia, Scoot, SilkAir and Singapore Airlines also operate direct services between Australia and Singapore. Singapore Airlines has the biggest share of the passenger traffic, operating up to 132 frequencies per week in the 2018 Northern Summer IATA scheduling period².

3.9 In the delegate’s view, allowing KLM to code share on Qantas-operated services between Australia and Singapore will add to the number of carriers that market services on the route and is unlikely to have a detrimental impact on competition. For this reason, the delegate did not find it necessary to have regard to the additional criteria in section 9 of the Policy Statement.

3.10 The delegate finds that the matters specified in paragraph 18(2)(b)³ of the Policy Statement are not relevant to the variation under consideration. There is nothing to suggest that Qantas’ transfer application involves speculative activity, and Qantas has exercised the allocation in question for a period of more than six months.

3.11 Having considered the criteria set out in section 18 of the Policy Statement, the Commission’s delegate is not satisfied that the allocation, as proposed to be varied in Qantas’ application, would not be of benefit to the public. Therefore, in accordance with section 25 of the Act, the delegate must make a decision varying the determination in a way that gives effect to the variation requested in the transfer application.

² Northern Summer 2018 International Airlines Timetable Summary (24 March to 27 October 2018), www.infrastructure.gov.au

³ Paragraph 18(2)(b) provides that the Commission is to have regard to the following matters, to the extent that they are relevant to the variation under consideration: (i) the undesirability of approving a transfer where doing so will, or is reasonably likely to, permit or encourage any form of speculative activity, including trading in capacity allocations for commercial benefit; (ii) the undesirability, other than in exceptional cases, of approving a transfer application made by a carrier that has never exercised an allocation for a period of less than six months.

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

3.13 The Commission's delegate has decided to add conditions permitting the use of the capacity for the provision of code share services between Qantas and KLM on the Singapore route in accordance with the Australia-Singapore air services arrangements. In accordance with section 23 of the Policy Statement, Qantas is required to take all reasonable steps to ensure that passengers are informed at the time of booking that one or more other carriers may operate the flight.

3.14 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.

4 Decision varying Determination [2007] IASC 116 allocating capacity to Qantas on the Singapore route ([2018] IASC 233); Decision varying Determination [2017] IASC 131 allocating capacity to Qantas on the Singapore route ([2018] IASC 234)

4.1 In accordance with section 25 of the Act, the Commission varies Determinations [2007] IASC 116 and [2017] IASC 131 which allocate unrestricted capacity to Qantas on the Singapore route, by:

adding the following conditions to the Determinations:

- the capacity may be used by Qantas to provide code share services with KLM in accordance with the code share agreement between Qantas and KLM made on 08 October 2018 and the air services arrangements between Australia and Singapore;
- Qantas must apply to the Commission for approval of any proposed variations to the code share agreement between Qantas and KLM 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 Qantas proposes 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, the 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; and
- 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.

4.2 These decisions come into effect from the date of issue and are valid for the duration of Determinations [2007] IASC 116 and [2017] IASC 131.

Dated: 26 October 2018

A handwritten signature in black ink that reads "Marlene Tucker". The signature is written in a cursive style with a large, stylized initial 'M'.

MARLENE TUCKER
Executive Director
Delegate of the IASC Commissioners