



Australian Government

International Air Services Commission

DECISION

The Route: Hong Kong
The Applicant: Qantas Airways Limited
(ABN 16 009 661 901) (Qantas)
Decision: [2023] IASC 217
Variation Of: [2019] IASC 129
Public Register File: IASC/APP/202366

The Commission varies Determination [2019] IASC 129 to permit the use of the capacity on the Hong Kong route for code sharing between Qantas Airways Limited and KLM Royal Dutch Airlines, subject to certain conditions. 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 1 November 2023, Qantas applied to the International Air Services Commission (the Commission) seeking to vary renewal Determination [2019] IASC 129 (as varied), to permit the utilisation of capacity for KLM Royal Dutch Airlines (KLM) to offer code share services, as marketing carrier, on Qantas operated services on the Hong Kong route, under a free sale arrangement, from 1 January 2024 or as soon as all necessary approvals are received. Qantas provided the Commission with a copy of its code share agreement with KLM, on a confidential basis.

1.2 In its application, Qantas stated that the proposed code share services will provide additional customer choice and enhanced one-stop connectivity between Australia and the Netherlands. The airline also stated that the code share agreement will increase competition on the route as a result of enabling KLM to sell more itinerary options, with both airlines continuing to price and sell tickets independently of each other.

1.3 The renewal Determination allocates to Qantas 25 frequencies per week in each direction to operate passenger services on the Hong Kong route and permits the capacity to be used by Qantas for the provision of code share services with British Airways, Finnair, Air France, LATAM Airlines and El Al Airlines, subject to certain conditions. The capacity may also be utilised by Qantas' wholly-owned subsidiary, Jetstar Airways Pty Limited.

1.4 In accordance with section 22 of the *International Air Services Commission Act 1992* (the Act), the Commission published, on 3 November 2023, a notice inviting submissions about the application for variation. No submissions were received.

1.5 All non-confidential material supplied by the applicant is available on the

Commission's website (www.iasc.gov.au).

2 Air services arrangements

2.1 Paragraph 7(2)(aa) of the Act provides that the Commission must not make a variation to an existing allocation of capacity contrary to any restrictions contained in a bilateral arrangement(s).

2.2 Under the Australia – Hong Kong air services arrangements, Australian designated airlines may operate up to 72 frequencies per week in each direction between Hong Kong and the following points in Australia: Sydney, Melbourne, Brisbane and/or Perth, to operate passenger or all-cargo services. According to the Register of Available Capacity, there remain 43 frequencies per week available for allocation to Australian designated airlines. There is no limit on the number of frequencies that may be operated for passenger or all-cargo services from all other points in Australia.

2.3 The designated airlines of Australia may at their discretion freely convert and reconvert capacity for the operation of passenger services and all-cargo services between Hong Kong and Sydney, Melbourne, Brisbane and Perth on the basis of one passenger frequency for one all-cargo frequency or vice versa.

2.4 Under the Australia–Hong Kong air services arrangements, a designated airline of Australia may, subject to conditions, enter into code share arrangements, whether as the operating or marketing airline, in respect of passenger or freighter services with: another designated airline(s) of Australia, an airline(s) of Hong Kong and an airline(s) of a third country or countries. Capacity used under code share arrangements by the marketing carrier is counted against the capacity entitlements of the operating carrier.

3 The Commission's consideration

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 of the Act.

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 of the Act.

3.4 Under section 11 of the Act, the Minister 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.

3.5 Section 18 of the Policy Statement specifically deals with ‘transfer applications’ such as this one. It provides that, in assessing whether the variation requested would not be of benefit to the public for the purpose of subsection 25(2) of the Act, the Commission is to have regard to the ‘reasonable capability criterion’ set out in section 8 of the Policy Statement and may have regard to any of the additional criteria set out in section 9 that the Commission considers to be relevant. The Commission is also to have regard to the matters specified in paragraph 18(2)(b) of the Policy Statement to the extent that they are relevant to the variation under consideration.

3.6 ‘Reasonable capability criterion’ is defined in section 8 of the Policy Statement to mean the extent to which Australian carriers are reasonably capable of: a) obtaining the necessary approvals to operate on and service the route, and b) of using the capacity allocated under the Determination. The ‘additional criteria’ to which the Commission may have regard are set out in section 9 of the Policy Statement.

3.7 The Commission notes that Qantas is an established Australian international carrier currently operating services on the Australia-Hong Kong route, and therefore finds that the airline is reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated under the Determination.

3.8 The Australia-Hong Kong route is serviced by two carriers, Qantas and Cathay Pacific, offering own-operated and/or code share services with other airlines. For the Northern Winter 2023-24 IATA scheduling season, Cathay Pacific is the largest airline on the route, operating up to 63 direct services per week between Australia and Hong Kong. Qantas operates up to 14 direct services per week between Australia and Hong Kong from Sydney and Melbourne. Several third country airlines also code share with Qantas and Cathay Pacific on the route¹.

3.9 The proposed code share arrangements would involve connections between Qantas’s daily Sydney-Hong Kong and Melbourne-Hong Kong flights and services operated on the Hong Kong-Netherlands route by KLM (up to 4 direct services per week in Northern Winter 2023-24)². KLM currently offers code share services with Qantas on the Australia-Netherlands route via two mid-points in Asia, Singapore and Bangkok³.

3.10 KLM maintains an extensive network of destinations across the world, including to 114 points in Europe, 20 points in Africa, 26 points in Asia, 16 points in Central America, 8 points in the Middle East and 41 points in North America⁴.

3.11 The Commission considers that the proposed arrangements between Qantas and KLM will provide additional options and choice for consumers travelling between

¹ Data sourced from FlightConnections.com

² Data sourced from FlightConnections.com

³ Approved by the IASC through Decisions [2018] IASC 234, [2018] IASC 233 and [2019] IASC 207 varying existing determinations.

⁴ <https://www.klm.com/travel-guide/destinations>

Sydney and Melbourne and Amsterdam, and connecting to/from points in Europe, Africa, Asia, Central America, Middle East and North America (v.v.) marketed via KLM's distribution channels.

3.12 The Commission notes that it has received no submissions opposing the variation sought in Qantas' transfer application. This means that the variation sought by Qantas has not been contested, and would not limit the ability of other carriers to utilise capacity on the route. There is nothing before the Commission to indicate that its assessment of benefit to the public for the purpose of subsection 25(2) of the Act would be assisted by having regard to the additional criteria in section 9 of the Policy Statement.

3.13 Having considered the criteria set out in section 18 of the Policy Statement, the Commission is satisfied that the allocation, as proposed to be varied by permitting KLM to code share, as marketing carrier, on flights operated by Qantas on the Australia-Hong Kong route, would be of benefit to the public. The Commission considers that there is unlikely to be any lessening of public benefit through authorising the code sharing arrangements in relation to the Hong Kong route. Therefore, in accordance with section 25 of the Act, the Commission must make a decision varying the Determination in a way that gives effect to the variation requested in the transfer application.

3.14 The Commission finds that the matters specified in paragraph 18(2)(b) of the Policy Statement are not relevant to the variation under consideration. The Commission does not have information to suggest that Qantas' transfer application involves speculative activity. Qantas is an established international carrier that currently holds multiple determinations and other regulatory approvals enabling the carrier to operate scheduled international air services on various routes, including the Australia-Hong Kong route.

3.15 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 capacity allocated under a determination in joint services with another carrier.

3.16 The Commission has decided to add conditions permitting the use of the capacity for the provision of code share services between Qantas and KLM on the Hong Kong route. As required by section 23 of the Policy Statement, the Commission has included a condition requiring the airlines to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flights.

3.17 Nothing in this decision should be taken as indicating either approval or disapproval by the Australian Competition and Consumer Commission (ACCC). This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

4 Decision varying Determination [2019] IASC 129 which allocates capacity to Qantas Airways Limited on the Hong Kong route ([2023] IASC 217)


4.1 In accordance with section 25 of the Act and the air services arrangements between Australia and Hong Kong, the Commission varies Determination [2019] IASC 129 which allocates capacity to Qantas Airways Limited on the Hong Kong route, by:

adding the following conditions to the Determination:

- The capacity may be used by Qantas Airways Limited to provide code share services with KLM Royal Dutch Airlines in accordance with the code share agreement between the airlines, made effective on 8 October 2018 (as amended).
- Qantas Airways Limited must apply to the Commission for approval of any proposed variations to the code share agreement between Qantas Airways Limited and KLM Royal Dutch Airlines, which would change the relevant commercial aspects of the structure of the agreements from a free sale code share arrangement to a blocked space, or if the airlines propose to add third country routes on which the airlines will code share where Australian capacity 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 Australian Consumer Law.

4.2 This decision comes into effect from the date of issue and is valid for the duration of Determination [2019] IASC 129.

Dated: 4 December 2023


Genevieve Butler
Chairperson


Jane McKeon
Commissioner