



**Australian Government**  

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**International Air Services Commission**

**DECISION**

**Decision:** [2023] IASC 201  
**Variation Of:** [2017] IASC 131  
**The Route:** Singapore  
**The Applicant:** Qantas Airways Limited (Qantas)  
(ABN 16 009 661 901)  
**Public Register File:** IASC/APP/202309

**The Commission varies Determination [2017] IASC 131 to permit the use of the capacity on the Singapore route for code sharing between Qantas' wholly-owned subsidiary, Jetstar Airways Pty Limited and Fiji Airways. 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 31 January 2023, Qantas applied to the International Air Services Commission (the Commission) seeking to vary Determination [2017] IASC 131, as varied (the Determination), to permit the utilisation of the capacity for code share services between Qantas' wholly-owned subsidiary, Jetstar Airways Pty Limited (Jetstar) and Fiji Airways on the Singapore route. Specifically, it is proposed that Air Pacific Limited (trading as Fiji Airways and herein referred to as Fiji Airways) will offer code share services, as marketing carrier, on flights operated by Jetstar on the Singapore route, under a free-sale arrangement. Qantas provided the Commission with a copy of the code share agreement with Fiji Airways, on a confidential basis.

1.2 The Determination allocates to Qantas unlimited passenger capacity in each direction on the Singapore route and permits the capacity to be used by Qantas and/or any wholly-owned subsidiary of Qantas, such as Jetstar. The Determination permits code share services between Qantas and the following airlines: British Airways; Air France; Jet Airways; Japan Airlines; China Eastern; Finnair; Emirates; Bangkok Airways; Sri Lankan Airlines; Fiji Airways; LATAM Airlines and KLM Royal Dutch Airlines. Additionally, the Commission has also permitted the capacity to be used by Jetstar to code share with Emirates and Finnair.

1.3 In accordance with section 22 of the *International Air Services Commission Act 1992* (the Act), on 2 February 2023, the Commission published Qantas' application on the Commission's website inviting submissions about the application. No submissions were received.

1.4 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 Air services arrangements**

2.1 Under paragraph 7(2)(aa) of the Act, 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 permit the designation of multiple carriers to operate international air transport services between Australia and Singapore. The air services arrangements permit designated Australian carriers to determine the frequency and capacity they wish to operate between Australia and Singapore.

2.3 Additionally, a designated carrier of Australia may enter into unrestricted code share, blocked space or other cooperative marketing arrangements with any other airline, including airlines of third countries.

## **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. The Commission has assessed the application 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 considered the application of the reasonable capability criterion to the circumstances of this application. The Commission notes that Jetstar is an established international carrier currently operating services on the Australia-Singapore 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 Commission did not have regard to the additional criteria in section 9 of the Policy Statement. The Commission notes that there is unlimited passenger capacity on the route and that it has received no adverse submissions opposing the variation sought in Qantas’ transfer application.

3.9 In these circumstances, 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. The Commission considers that there is unlikely to be any lessening of public benefit through authorising the code sharing arrangement in relation to the Singapore route and such authorisation would not limit the ability of other carriers to apply for or utilise the capacity on the route.

3.10 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. Jetstar 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-Singapore route.

3.11 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 permitting Fiji Airways to code share, as marketing carrier, on flights operated by Jetstar on the Australia-Singapore route, would be of benefit to the public. 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.

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

3.13 The Commission has decided to add conditions permitting the use of the capacity for the provision of code share services between Jetstar and Fiji Airways on the Singapore route. As required by section 23 of the Policy Statement, the Commission has 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.

3.14 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 [2017] IASC 131 allocating capacity to Qantas Airways Limited on the Singapore route ([2023] IASC 201)**

4.1 In accordance with section 25 of the Act, the Commission varies Determination [2017] IASC 131 which allocates capacity to Qantas Airways Limited on the Singapore route, by:

*adding* the following conditions to the Determination:

- The capacity may be used by Jetstar Airways Pty Limited to provide code share services with Fiji Airways in accordance with the code share agreement between Jetstar Airways Pty Limited and Air Pacific Limited trading as Fiji Airways, made effective on 1 November 2017, as amended, 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 Jetstar Airways Pty Limited and Air Pacific Limited which would change the relevant commercial aspects of the agreement from a free sale code share arrangement to a block 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 the Australian Consumer Law.

4.2 This decision comes into effect from the date of issue and is valid for the duration of Determination [2017] IASC 131.

Dated: 24 February 2023



Genevieve Butler  
Chairperson



Jane McKeon  
Commissioner