

DECISIONS

APPLICATION BY QANTAS AIRWAYS LIMITED (ACN 009 661 901) TO CODE SHARE WITH BRITISH AIRWAYS ON THE SINGAPORE, THAILAND AND UNITED KINGDOM ROUTES

Decision Numbers:

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GLOSSARY

Qantas	Qantas Airways Limited
BA	British Airways
AIPA	Australian and International Pilots Association
ACCC	Australian Competition and Consumer Commission
ALAEA	Australian Licenced Aircraft Engineers Association
FAAA	Flight Attendants' Association of Australia
TTF	Tourism Task Force
TCA	Tourism Council of Australia
DoTRD	Department of Transport and Regional Development
JSA	Joint Services Agreement (between Qantas and BA)
ITOA	Inbound Tourism Organisation of Australia Limited
WATC	Western Australian Tourism Commission
GCTB	Gold Coast Tourism Bureau
ONT	Office of National Tourism

1. The application

1.1. On 11 September 1997 Qantas Airways Limited ACN 009 661 901 (Qantas) applied to the Commission to vary those determinations allocating capacity on the Singapore, Thailand and United Kingdom routes to Qantas. The effect of the variations, if granted, would be to permit Qantas to code share with British Airways (BA) on those routes.

1.2. The determinations which Qantas originally sought to vary are:

Determination	Route	Capacity allocated under determination
DET9609	Singapore	1.65 B747 equivalents per week
DET9712	Singapore	32.70 B747 equivalents per week
DET9713	Singapore	7.50 B747 equivalents per week
DET9709	Thailand	21.80 B747 equivalents per week
DET9707	UK	14 services per week
DET9727	UK	7 services per week

1.3. On 16 September 1997 the Commission published a notice inviting submissions from any interested persons about the Qantas applications. The closing date for submissions was 30 September 1997. Submissions were received from the Australian and International Pilots Association (AIPA) and the Australian Competition and Consumer Commission (ACCC).

1.4. Following a query by the Commission in relation to IASC/DET/9306, which relates to the capacity covered by IASC/DET/9713 but covers the period up to 22 March 1998, Qantas asked the Commission on 14 November 1997 to include IASC/DET/9306 in these decisions. Although the circumstances have not permitted the Commission to advertise this matter in accordance with its normal procedures, inclusion of IASC/DET/9306 appears to the Commission to be incidental but appropriate, given that it only relates to an interim period of four months before IASC/DET/9713 takes effect.

1.5. On 17 October 1997 the Commission issued Draft Decisions proposing to reject the Qantas applications in relation to the Singapore and UK routes and defer consideration of the application in relation to the Thailand route until the relevant air services arrangements permitted code sharing services. Comments were invited on the Draft Decisions by 5 November 1997.

1.6. Qantas made detailed submissions on the Draft Decisions extending and amplifying the factual basis for the code share. The submission Qantas had originally made was substantially expanded and reinforced. BA lodged a very informative submission supporting the Qantas application and providing factual material in addition to that supplied by Qantas. BA had not lodged a submission prior to the Draft Decisions. In addition submissions were made on the Draft Decisions by a number of State Governments and tourism bodies, all of whom supported the code share.

1.7. The only submissions on the Draft Decisions which urged the Commission to reject the code share came from AIPA, the Australian Licenced Aircraft Engineers Association (ALAEA) and the Flight Attendants' Association of Australia (FAAA).

1.8. All non-confidential material supplied by the applicant and submissions from other parties are filed on the Register of Public Documents. Confidential material supplied by the applicant is filed on the Commission's confidential register.

2. The proposal

2.1. BA proposes to code share on Qantas flights to Singapore, Thailand and the UK and Qantas proposes to code share on BA flights to Singapore and London. The proposals do not, at this stage, involve Qantas code sharing on BA flights to Thailand (although Qantas foreshadowed its intention to code share on BA flights to Thailand once this is possible under the Australia-Thailand air services arrangements).

2.2. Qantas proposes initially to code share on 12 BA flights per week and BA proposes initially to code share on 44 Qantas flights per week. These numbers will increase to 14 and 49 respectively as of 29 March 1998. The flights to be code shared are detailed in the tables below.

From 26 October 1997 to 28 March 1998

Operating carrier	Code sharing carrier	Route	Frequency	Aircraft type	B747 equivalent to be code shared	Total per week
Qantas	BA	MEL-SIN-LON vv	7	B747	0.25	1.75
Qantas	BA	BNE-SIN vv	2	B747	0.25	0.50
Qantas	BA	SYD-SIN vv	2	B767	0.15	0.30
Qantas	BA	SYD-SIN vv	7	B747	0.25	1.75
Qantas	BA	ADL-SIN vv	4	B767	0.15	0.60
Qantas	BA	CNS-DRW-SIN vv	7	B767	0.15	1.05
Qantas	BA	SYD-BKK-LON vv	7	B747	0.25	1.75
Qantas	BA	MEL-BKK vv	3	B747	0.25	0.75
Qantas	BA	PER-BKK vv	2	B767	0.15	0.30
Qantas	BA	BNE-BKK vv	3	B767	0.15	0.45
Total for Qantas operated flights			44			9.20
BA	Qantas	PER-SIN-LON	7	B747	0.25	1.75
BA	Qantas	BNE-SIN-LON	5	B747	0.25	1.25
Total for BA operated flights			12			3.00

From 28 March 1998 onwards

Operating carrier	Code sharing carrier	Route	Frequency	Aircraft type	B747 equivalent to be code shared	Total per week
Qantas	BA	MEL-SIN-LON vv	7	B747	0.25	1.75
Qantas	BA	SYD-SIN vv	3	B767	0.15	0.45
Qantas	BA	SYD-SIN vv	7	B747	0.25	1.75
Qantas	BA	ADL-SIN vv	4	B767	0.15	0.60
Qantas	BA	CNS-DRW-SIN vv	6	B767	0.15	0.90
Qantas	BA	SYD-BKK-LON vv	7	B747	0.25	1.75
Qantas	BA	PER-SIN	7	B767	0.15	1.05
Qantas	BA	MEL-BKK vv	3	B747	0.25	0.75
Qantas	BA	PER-BKK vv	2	B767	0.15	0.30
Qantas	BA	BNE-BKK vv	3	B767	0.15	0.45
Total for Qantas operated flights			49			9.75
BA	Qantas	PER-SIN-LON	7	B747	0.25	1.75
BA	Qantas	BNE-SIN-LON	7	B747	0.25	1.75
Total for BA operated flights			14			3.50

2.3. The amount of capacity to be code shared is not reciprocal. BA will utilise more capacity on Qantas flights than Qantas will utilise on BA flights. The extent of the imbalance is detailed in the above tables. For example, initially the imbalance on the Singapore route due to the code share will be 2.95 B747 units and on the Thailand route 3.25 B747 units. Such an imbalance can result in the underutilisation of capacity allocated by the Commission and the need to hand back unutilised capacity.

3. Services on the routes

3.1. The services described below are those as operated at the end of the 1997 Northern Summer schedule. This is because all submissions responding to the Draft Decisions related to the position as it applied under those schedules. The schedules changed on 26 October 1997, but not materially.

Singapore

3.2. Nine airlines offer direct services between Australia and Singapore. These are Qantas (54 flights per week utilising 41.85 B747 equivalent units of capacity), Singapore Airlines (45 flights utilising 31.13 B747 equivalent units), BA (7 flights), Egyptair (2 flights), Emirates (3 flights), Gulf Air (3 flights), KLM (3 flights) and Lauda Air (3 flights). These airlines account for 88% of the total origin/destination traffic, with Qantas and BA accounting for about 57% of that traffic.

3.3. Indirect flights are provided by Garuda and Malaysia Airlines.

Thailand

3.4. Six airlines offer direct services between Australia and Thailand. These are Qantas (26 flights per week utilising 21.8 B747 equivalent units of capacity), Thai International (10 flights utilising 8.95 B747 equivalent units), Air New Zealand (2 flights), Alitalia (3 flights), BA (7 flights) and Olympic Airways (3 flights). These airlines account for 91% of total origin/destination traffic, with Qantas and BA accounting for 56% of that traffic.

3.5. Indirect flights are provided by Garuda, Singapore Airlines and Malaysia Airlines.

United Kingdom

3.6. Three airlines offer direct, one-stop services between Australia and the UK. These are Qantas (14 flights per week) and BA (14 flights). Virgin Atlantic offers 7 flights per week operated on a code share basis with Malaysia Airlines.

3.7. One-stop flights are also provided by a number of carriers including Singapore Airlines, Malaysia Airlines, Thai International, Cathay Pacific, JAL, and United Airlines. In addition, multiple stop flights are offered by numerous carriers, including Air New Zealand, Emirates, Gulf Air and South African Airways.

3.8. Qantas and BA account for 48% of the total origin/destination traffic.

3.9. BA increased its flights to 19 per week from 26 October 1997 and the Commission has been advised that BA will increase these services to 21 per week from 29 March 1998. It should also be noted that Qantas has received an additional allocation of capacity of seven services per week on the UK route from the Commission. This additional capacity becomes available in April 1998 and must be fully utilised from April 1999. However Qantas has advised the Commission that it will be seeking a deferral of the dates by which it must commence and fully utilise this additional capacity.

4. Characteristics of the routes

Singapore

4.1. In the year ended 30 June 1997, traffic on the Australia - Singapore route totalled approximately 1,842,000 passenger movements. Of these passenger movements 32% were passengers with a destination of either Australia or Singapore, travelling directly between the two countries (direct traffic). A total of 4% of movements involved passengers travelling indirectly between the two countries (indirect traffic). The remaining 64% of the movements involved passengers travelling directly between Australia and Singapore to and from countries beyond Australia or Singapore (beyond

traffic). Of the beyond traffic, 20% involved travelling to or from the UK, 9% to or from Malaysia, and 7% to or from Germany.

4.2. Details of the passenger movements on the route between the years ended June 1994 and June 1997 are summarised below.

**Australia - Singapore Passenger Movements
Years Ending June 1994 - June 1997**

	Year ending June				Average annual growth 1994 to 1997	Annual growth 1996 to 1997
	1994	1995	1996	1997		
Direct traffic	495,200	541,200	576,200	593,900	6.2%	3.1%
Indirect traffic	36,400	47,200	73,400	77,700	28.7%	5.8%
Beyond traffic	1,043,600	1,142,900	1,164,600	1,170,500	3.9%	0.5%
Total traffic	1,575,100	1,731,300	1,814,200	1,842,000	5.4%	1.5%

Note: Data in this table have been derived from information supplied by the Australian Bureau of Statistics and includes both scheduled and charter traffic.

4.3. In the year ended 30 June 1997, Australian residents comprised 31% of the direct passenger traffic. Australians visiting Singapore did so mainly for a holiday (37%) or for business (34%). In the same year, visitors from Singapore travelled to Australia mainly for a holiday (71%) or to visit relatives (11%).

4.4. The effects of the current economic difficulties in Asia on passenger movements between Australia and Singapore are difficult to predict. Neither the Tourism Task Force (TTF) nor the Tourism Council of Australia (TCA) had available, at this stage, forecasts of the impact of the economic difficulties on inbound tourism from Singapore.

Thailand

4.5. In the year ended 30 June 1997, traffic on the Australia - Thailand route totalled approximately 652,300 passenger movements. Of these passenger movements, 44% were passengers with a destination of either Australia or Thailand, travelling directly between the two countries (direct traffic). A total of 10% of movements involved passengers travelling indirectly between the two countries (indirect traffic). The remaining 46% of the movements involved passengers travelling directly between Australia and Thailand to and from countries beyond Australia or Thailand (beyond traffic). Of the beyond traffic, 22% involved travelling to or from the UK, 8% to or from Italy, and 8% to or from Germany.

4.6. Details of the passenger movements on the route between the years ended June 1994 and June 1997 are summarised below.

**Australia - Thailand Passenger Movements
Years Ending June 1994 - June 1997**

	Year ending June				Average	Annual
	1994	1995	1996	1997	annual growth 1994 to 1997	growth 1996 to 1997
Direct traffic	203,200	226,100	256,600	285,900	12.1%	11.4%
Indirect traffic	65,800	81,500	76,600	66,900	0.6%	-12.6%
Beyond traffic	239,700	240,700	265,500	299,500	7.7%	12.8%
Total traffic	508,700	548,200	598,600	652,300	8.6%	9.0%

Note: Data in this table have been derived from information supplied by the Australian Bureau of Statistics and includes both scheduled and charter traffic.

4.7. In the year ended 30 June 1997, Australian residents comprised 49% of the direct passenger traffic. Australians visiting Thailand did so mainly for a holiday (66%) or for business (15%). In the same year, visitors from Thailand travelled to Australia mainly for a holiday (64%) or education (9%).

4.8. Thailand has recently experienced a severe economic crisis which must have an effect, at least in the short term, on passenger movements between that country and Australia. Depreciation of the Thai currency is likely to reduce inbound tourism from Thailand significantly although Australian tourism to Thailand is likely to increase. Neither the TTF nor the TCA had available, at this stage, forecasts of the impact of the economic difficulties on inbound tourism from Thailand. Qantas referred in its submissions to a softening of the market but no data was provided.

United Kingdom

4.9. In the year ended 30 June 1997, traffic on the Australia - UK route totalled approximately 1,607,100 passenger movements. Of these passenger movements, 31% were passengers with a destination of either Australia or the UK, travelling directly between the two countries (direct traffic). A total of 11% of the movements involved passengers travelling directly between Australia and the UK to and from countries beyond Australia or the UK (beyond traffic). The remaining 58% of movements involved passengers travelling indirectly between the two countries (indirect traffic). Of the indirect traffic, 25% involved travelling via Singapore, 14% via Hong Kong, and 7% via Thailand.

4.10. Details of the passenger movements on the route between the years ended June 1994 and June 1997 are summarised below.

Australia - UK Passenger Movements
Years Ending 30 June 1994 - 30 June 1997

	Year ending June				Average	Annual
	1994	1995	1996	1997	annual growth	growth
					1994 to 1997	1996 to 1997
Direct traffic	438,800	483,500	469,900	494,800	4.1%	5.3%
Indirect traffic	731,100	797,200	812,400	927,900	8.3%	14.2%
Beyond traffic	144,600	171,600	177,000	184,400	8.4%	4.2%
Total traffic	1,314,400	1,452,300	1,459,300	1,607,100	6.9%	10.1%

Note: Data in this table have been derived from information supplied by the Australian Bureau of Statistics and includes both scheduled and charter traffic.

4.11. In the year ended 30 June 1997, Australian residents comprised 44% of the direct passenger traffic. Australians visiting the UK did so mainly for a holiday (51%) or to visit relatives (32%). In the same year, visitors from the UK travelled to Australia mainly to visit relatives (44%) or for a holiday (41%).

4.12. In the year ended 30 June 1997, Qantas and BA accounted for 48% of the total origin destination traffic to/from the UK.

4.13. The impact of the economic difficulties in Asia on Australian visitors to the UK will depend on the extent to which depreciation of the Australian dollar against European currencies is sustained and how the airlines respond competitively to any reduction in demand with discounted fares.

4.14. As far as inbound tourism from the UK is concerned devaluation of Asian currencies may have some minor effect on the choice of Asia Pacific destinations, placing some downward pressure on the demand for Australia as a destination.

4.15. Neither the TTF nor the TCA provided forecasts of the impact on the Australia-UK route of the economic difficulties in Asia.

5. Provisions of relevant Air Services Arrangements

Singapore

5.1. The Australia - Singapore ASA permits code sharing, including the use of third country carriers to provide the code share services. It specifies the manner in which capacity utilised via code share operations is to be calculated for both the operating and non-operating carriers. The Department of Transport and Regional Development (DoTRD) has advised that the Qantas/BA proposal is consistent with the ASA.

Thailand

5.2. The Australia - Thailand ASA does not mention the use of capacity via code share operations. The conventional interpretation of an ASA is that if code sharing is not specifically mentioned as being permitted then it is not allowed. The Commission sought advice from DoTRD on whether the code share proposal is permitted under the Australia - Thailand ASA. DoTRD has not been able to confirm that code sharing is permitted. In the absence of advice to the contrary, the Commission could not assume that the Qantas/BA proposal is consistent with the ASA.

United Kingdom

5.3. The Australia - UK ASA permits code sharing, including the use of third country carriers to provide the code share services. DoTRD has advised the Commission that the Qantas/BA proposal is consistent with the ASA.

6. Legislative framework

6.1. The legislative framework for varying determinations made under the *International Air Services Commission Act 1992* is set out in Attachment A.

6.2. Carriers to whom a determination allocates capacity may, at any time, apply to the Commission, under section 21 of the Act, for the determination to be varied. Under section 24(1), the Commission must make a decision either confirming the determination or varying the determination as requested in the application.

6.3. Under section 24(2), 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 unless the Commission is satisfied that the allocation, as so varied, would be of benefit to the public.

6.4. In exercising its powers, the Commission must take account of the objectives of the Act as set out in section 3 and of the requirement of section 6(3)(b) that the Commission have regard to Australia's international obligations concerning the operation of international air services.

6.5. Section 6(3)(a) also requires the Commission to comply with policy statements made by the Minister under section 11. The current Policy Statement, dated 23 April 1997, includes criteria to be applied by the Commission in assessing the benefit to the public of allocations of capacity and of variations to existing determinations.

7. Qantas' supporting claims and submissions lodged by interested parties

Qantas

7.1. Qantas lodged an initial submission in support of its applications. Following publication of the Draft Decisions, Qantas lodged substantially more detailed submissions in support of its original applications, extending and amplifying the factual basis for the benefits it claimed the code share would produce.

7.2. In its original submission, Qantas submitted that the code share operations would result in consumer benefits, facilitate inbound tourism and help Qantas compete more effectively with foreign carriers. Qantas claimed that:

- Brisbane will receive a daily, one stop, same aircraft B747 service from London via Singapore. This is superior to the current situation in which BA flights operate three times per week via Singapore and Sydney and the daily Qantas service involves a four hour transit in Singapore to connect to London. In addition, the BA services will offer a three class service compared to the existing Qantas services which offer only two classes.
- Perth passengers will be able to fly daily on a Qantas code with a same aircraft service (operated by BA) through to London. At the moment Qantas does not offer a direct connection at Singapore for Perth-London passengers.
- Qantas and BA passengers will benefit from a move by Qantas to Heathrow Terminal 4 because it will mean flight connections can be made in less time and without changing terminals; flight switching between Qantas and BA will be easier; passenger handling when flights are disrupted will be better; and passenger facilities such as lounges, shops and check-in are much better.
- As part of the code share implementation, the marketing carrier will provide the operating carrier with more information about passengers and this will be particularly beneficial to servicing the customer when flights are disrupted.
- The code share operations will simplify and streamline ticketing of services for agents, making it easier for agents to book Qantas and BA without the need to check flights of other carriers.
- Inbound tourism will be facilitated by the introduction of the new Brisbane services.
- The proposed services will not have an adverse impact on employment of flight crew.

- The proposed code share will result in an improvement in Qantas' net profit position of approximately \$10 million per annum, thus helping to foster the development of Qantas as a strong Australian carrier.

7.3. In its submission on the Draft Decisions Qantas claimed that:

- There is overlap between benefits and the Commission should look at the benefits on a package basis rather than separately under each Policy Statement criterion. Gains from code sharing will be shared with passengers by offering a better product.
- The public benefit will be increased, not reduced, by the proposal. However even if the Commission finds a diminished benefit, this should not automatically lead to rejection.
- The proposal should be looked at in the broader context of Qantas' attempts to build a stronger, more competitive Australian airline.
- The Commission should support the application for a variation to the Thailand determination, subject to confirmation that bilateral entitlements exist.
- As a result of the JSA, there are no detrimental foreign exchange effects associated with the code share proposal.
- The AIPA submission fails to address the broader implications for Qantas' profitability of the code sharing. There will be no impact on pilot employment as Qantas will continue to fully utilise its fleet and there will be steadily improving employment prospects for pilots.
- The softening of SE Asian markets as a result of recent economic developments means that UK/Europe performance is even more important to Qantas as these are the markets in which the code sharing is designed to have the greatest impact.
- The code sharing will result in the removal of product and service differences between the two airlines as a result of action such as loyalty program alignment, enhanced customer recognition, more consistent procedures, enhanced passenger experience, and leading edge product availability.
- The financial costs to BA of Qantas moving to Terminal 4 are such that the move would not have taken place without the anticipated code share benefits.
- When schedule coordination involves reduced services by one or other carrier, code sharing enables that carrier to retain a direct presence in the eyes of consumers.

- Tourism will benefit from marketing of services by BA and QF on each other's flights to a wider range of cities.
- Code sharing with BA through the Heathrow hub will broaden exposure of Australian destinations to European markets.
- Code sharing will result in a better Brisbane-UK service via Singapore.
- There will be tourism benefits from having two airlines, rather than one, marketing thin routes such as Cairns, Darwin and Adelaide.
- In addition to adding its code to Qantas' daily Melbourne service, BA will increase its own Melbourne services from four per week to daily.
- The release of Qantas aircraft from the Brisbane-Singapore sector will give rise to benefits on other routes.
- There will be no foreign exchange loss associated with the proposal as Qantas will continue to derive benefits from the BA Singapore-Brisbane flights in the same way it did when the route was flown by Qantas and there will be additional revenue from code sharing on BA's Singapore-London flights.
- Without the code sharing the changes to the Brisbane-Singapore-UK schedules would not have occurred. The planning and lead times involved have forced the schedule changes to be made pending approval.
- BA's three services per week to Brisbane via Sydney had very low load factors and might have been withdrawn anyway.
- Both airlines will continue to price and market their products competitively and each airline will be free to price independently.
- The carriage of Brisbane-UK through freight will be enhanced.
- Code sharing will allow Qantas to be a more effective competitor. It cannot compete on an equal footing with foreign carriers, who do not need IASC approval, without code sharing.
- The display of QF code share services on the CRS will not be to the detriment of any other equal or superior services. Code sharing occurs with similar CRS treatment on many other routes.
- The UK has negotiated complementary flexible code share agreements with Singapore and Thailand. Australia has been looking to negotiate similar agreements with Singapore and Thailand. While a Singapore agreement has been concluded Thailand has yet to agree to open negotiations.

- Star Alliance airlines have introduced code sharing on other routes and are likely to do so to Australia when bilateral entitlements allow.
- The Australian Government considers that foreign carriers provide a level of benefit equal to Australian carriers. In deciding that less use of Australian capacity, even when counterbalanced by increased foreign capacity, constitutes a reduced benefit, the Commission appears to be taking a very different view.

7.4. Qantas referred in its original submission to a number of code share and other alliances, existing and proposed. One of those alliances, between Virgin Atlantic and Malaysia Airlines, offers seven code share services between the UK and Australia and Qantas claimed that Virgin Atlantic has scope to increase those services without IASC approval.

7.5. In Qantas' view, other alliances between carriers such as Air New Zealand, Singapore Airlines, United Airlines, Thai International and Lufthansa offering services between Australia and the UK via a number of intermediate points, affect the competitive position on the Australia - UK route. Finally, on this point, Qantas drew attention to recent changes to the Australia - Netherlands air services arrangements which will entitle KLM to expand services to Australia either alone or on a code share basis.

7.6. The Commission sought clarification and elaboration from Qantas of a number of the matters raised in the submission on the Draft Decisions. Commission staff also met with Qantas to review factual information Qantas had submitted.

BA

7.7. BA claimed, in its submission following the Draft Decisions, that:

- Code sharing has changed from being unnecessary to being an essential tool for enabling the airlines to achieve the cooperation necessary to maximise the benefits of their global alliance.
- Code sharing is a pre-condition for each of the airlines to make fundamental decisions which they would otherwise not be prepared to make. While the Joint Services Agreement (JSA) is an important building block in the overall relationship between BA and Qantas, experience has demonstrated that much else remains to be done to produce the close relationship necessary for a truly global partnership.
- In the context of alliances, BA's experience has been that code sharing is an extremely important marketing device whenever regulatory circumstances permit. Given that BA and Qantas attract substantial numbers of consumers because of their networks, if one airline withdraws from a route or city this will

diminish that airline in the eyes of consumers and lead to substantial loss of revenue, as demonstrated by early experience under the JSA in Adelaide and Perth. Code sharing is an effective way of overcoming this.

- The JSA has not, of itself, been sufficient to enable BA and Qantas to take certain fundamental decisions which would enable them to more closely coordinate their operations without significant loss to their existing positions. Code sharing provides a mechanism for negating the risks inherent in schedule changes and rationalisation to match capacity with demand.
- Advice to the Commission from DoTRD makes clear the Australian Government's intentions for liberal bilateral arrangements with the UK. This implies minimisation of government intervention and maximum flexibility for the airlines to achieve commercial efficiency including through code sharing, which is specifically recognised in the MOU.
- Demand on the Brisbane - Singapore sector does not support daily B747 services by both Qantas and BA. If Qantas had not withdrawn its flights then BA would not have introduced its daily one stop service to Brisbane and Qantas would not have withdrawn its own service without the assurance of retaining passengers by having its designator on the BA flights.
- The proposals extend well beyond the Brisbane - Singapore route. Three BA services which used to operate via Sydney to Brisbane are now to go to Melbourne and will provide Melbourne with a daily BA service to Bangkok and London. BA would have more than likely withdrawn the three Brisbane services given low seat factors.
- With the Qantas code on the Perth flight and the BA code on the Darwin, Cairns and Adelaide flights, the code shares expand the reach of the two brand names.
- The addition through code sharing of new destinations in Australia to BA's network and the introduction of UK/Europe cities to the QF network will lead to greater support for Australian tourism through BA's extensive selling and marketing organisation, particularly in Europe.
- Until the agreement to code share was reached BA was not prepared to move other flights to accommodate QF at Terminal 4 in Heathrow.
- The later departure time from Brisbane to Singapore of the BA flights would be more convenient for shippers of perishable exports, mail and urgent courier parcels, elapsed times would be reduced and transshipment in Singapore avoided.

7.8. In support of its submission BA provided:

- evidence of the work being undertaken by the two airlines to achieve, as a practical matter, the efficiencies it is claimed the code share agreement is designed to achieve; and
- data relating to load factors on its flights from the UK to Brisbane and to Melbourne.

ACCC

7.9. The current applications have to be considered in the context of the JSA between Qantas and BA which came into effect on 19 June 1995. That agreement, which is a broad ranging commercial agreement covering revenue sharing, joint fares, schedule co-ordination and integrated marketing, was authorised on public benefit grounds by the Trade Practices Commission (now the ACCC) on 12 May 1995. Although the JSA is a wide ranging agreement it does not include code share services.

7.10. The ACCC advised the Commission that it had written to Qantas and BA on 25 June 1997 indicating that the ACCC would not be prepared to make a decision as to the competitive effects of the code sharing agreement, or whether the code sharing agreement would be considered a material change in circumstances sufficient to revoke authorisation of the JSA, until it had a chance to conduct market inquiries or was provided with further information which it had sought from Qantas on flight frequencies and capacity.

7.11. The ACCC submission to this Commission indicated that potential areas of concern would be:

- Any reduction in capacity or flight frequency would reduce the public benefits which had been acknowledged in the TPC's authorisation, such as larger virtual choice of flights, increased seat variety, the ability of airlines to switch passengers in the event of aircraft failure, and the possibility of increased prices due to decreased seat supply.
- If there are less seats available in total and reduced frequency of Qantas/BA services other airlines may not have to compete as vigorously and this may lead to price increases over the affected routes.
- Potential consumer deception problems arise if consumers are not adequately informed about which airline is operating the flight. In addition to the conditions normally imposed by the Commission, the ACCC suggests that the Commission consider requiring stickers on tickets stating which airline is operating the flight with non-compliance leading to revocation of the Determination.

7.12. The ACCC advised that if it were to consider the proposal for code sharing under the Trade Practices Act it would take into account issues raised in recent reports by the Bureau of Transport and Communications Economics and the Productivity Commission, including the impact on CRS displays. The ACCC pointed out that listings of code share flights can sometimes be so numerous that they fill the majority of the first screen that travel agents see (the screen can take only eight listings) and agents are unlikely to go to subsequent screens for other flights.

7.13. In response to the ACCC submission Qantas stated that there is no intention to reduce the number of seats available to consumers as a result of the code sharing. Rather, there will be a net increase in the number of seats available on the Brisbane/Singapore route. Qantas further submitted that the increase in the number of "JSA seats" between Brisbane and Singapore is a very clear manifestation of public benefit from the code share proposals.

7.14. In relation to consumer protection measures, Qantas drew attention to specific provisions in the code share agreement requiring the parties to use "all reasonable efforts" to ensure that consumers are informed of the identity of the operating carrier.

Airline Employee Associations

7.15. The AIPA submitted that it would support any measures designed to foster customer convenience and satisfaction provided that those measures do not sacrifice the viability or strength of Qantas' position in the airline industry or the security of employment and employment prospects for Qantas crews. The AIPA expressed concern that Qantas and BA might be proposing to replace Australian pilots and cabin crews on Qantas services from Heathrow Airport with BA pilots and cabin crews. AIPA supported this submission with reference to BA apparently seeking clearance from the UK Civil Aviation Authority for this purpose.

7.16. In a supplementary submission, the AIPA stated that, in the absence of any assurances from Qantas concerning job security, it had deep concerns about the effect of the Qantas application on the engagement of Australian flight crews. It claimed that the transfer of Brisbane - Singapore flights to BA had already adversely impacted on employment of pilots by Qantas.

7.17. Qantas responded to the AIPA submissions in a general way, stating that it does not anticipate any reduction in employment opportunities arising from the code share proposals and that the introduction of the code shares will bring beneficial long term effects for AIPA members. Qantas did, however, concede that there would be a short term reduction in Qantas services while its B747 refit program is carried out in 1998.

7.18. In a submission on the Draft Decisions, the AIPA reaffirmed its previous position opposing the Qantas application. The AIPA stated that it remained "*opposed to the philosophy that foreign operators should benefit because Qantas doesn't have*

sufficient equipment to service a route over which it has rights, as it appears on the Brisbane - Singapore route”.

7.19. The ALAEA considered that there was potential for the proposed arrangements to have a significant and negative impact on the Australian aviation industry as a result of a reduction in the skilled labour pool available in the engineering and maintenance areas.

7.20. The FAAA considered that the Qantas application would result in reduced job opportunities and career prospects for flight attendants and disruption to the family lives of many of the 315 crew living in Brisbane.

Queensland Government

7.21. The Queensland Department of the Premier and Cabinet lodged a submission following the Draft Decisions supporting the code share on the basis of inbound tourism benefits for Queensland arising from the daily, three class, one stop flights between London and Brisbane. The Department also saw obvious benefits to Queensland tourism from the inclusion of Cairns as a point on the BA route network resulting from the code share.

Tourism authorities and bodies

7.22. In response to the Draft Decisions a number of tourism authorities and bodies lodged submissions supporting the code share.

7.23. The Inbound Tourism Organisation of Australia (ITOA) expressed reservations about code sharing generally but indicated these concerns were outweighed in this case by the use of a single aircraft and reduced stopover time in Singapore. The ITOA noted that it had been unable to explore the extent of additional marketing efforts for the new services, implications for services connecting to India, or the adequacy of Singapore capacity particularly during Chinese New Year.

7.24. The Tourism Task Force urged the Commission to reconsider the Draft Decisions in favour of allowing BA and Qantas code sharing on the kangaroo routes. The TTF thought there should be a greater focus on the potential outbound European tourist market and recognition of the opportunity provided by the code share proposal to increase Australia's profile and accessibility from the UK and Europe.

7.25. The Western Australia Tourism Commission (WATC) believed that the Qantas/BA code share proposal would benefit tourism by enabling BA marketing of services to Australia, by increased access to European markets through the London Heathrow hub, and through daily same aircraft flights to Brisbane and Perth via Singapore.

7.26. The Gold Coast Tourism Bureau (GCTB) strongly supported the applications by Qantas as it believed airline frequency and capacity between South East Queensland and Asian and European markets would be significantly improved.

7.27. The Tourism Council of Australia (TCA) supported the Qantas/BA code share proposal because it would provide better access to Europe and regional areas of Australia, reduce stopover times and the need to change aircraft, provide access to a 3 class service, increase flights to Melbourne, and provide BA with a greater incentive to promote tourism to Australia. The TCA also claimed that there would be no loss of foreign exchange associated with the proposal, and that preferential treatment for code share partners is a world wide practice.

7.28. The Office of National Tourism (ONT) recognises that code sharing can confer tourism benefits depending on the particular arrangement and market. In this case the ONT submitted that the precise effect on tourism is difficult to determine, but considered that Qantas should be given the opportunity to demonstrate that its proposal would not hinder tourism, consumer and market objectives.

8. The Draft Decisions

8.1. The Commission issued Draft Decisions on 17 October 1997 proposing to reject the Qantas request for variations to the Determinations on the Singapore and UK routes. It did not appear to the Commission, on the basis of the information then available to it, that the Determinations if varied, would be of benefit to the public.

9. Commission's assessment of the applications – general comments

9.1. In cases where there are submissions about or opposing an application to vary a determination, the Policy Statement gives the Commission the discretion to consider the application against the public benefit criteria contained in paragraph 5 of the Policy Statement. The Commission has decided to do so in this case.

Interpretation of Commission's role

9.2. The Commission's task is to determine whether the Determinations, as varied, would be of benefit to the public. This means that the Commission should decide whether, following the proposed variations, there would at least be the same level of public benefits as before the variation. If not then the applications should be rejected. The Commission does not see this as requiring a finding that the variations themselves result in increased benefits.

9.3. Qantas submitted that as long as there is some public benefit remaining after the variation, no matter how small, the Commission must approve the variation. It would follow from this that, as the Policy Statement makes it clear that use of capacity

is of public benefit, the only basis on which the Commission could reject a variation would be if the variation resulted in capacity utilisation being reduced to nil. The Commission does not agree with the Qantas view.

9.4. Qantas relies on section 24(2) of the Act to support its view. However, the Commission does not regard that section as doing more than restricting the Commission's right to vary a determination to cases where it is satisfied that the varied determination would be of benefit to the public. In cases where the Commission concludes that it is not limited by section 24(2), it is open to the Commission to use its discretion to make decisions most likely to achieve the objectives of the Act, subject to any relevant requirements of the Policy Statement.

Bilateral obligations

9.5. BA submitted that, in accordance with the bilateral arrangements negotiated by the Australian Government with the UK, designated airlines are only required to *notify* aeronautical authorities of code sharing, rather than to obtain approval.

9.6. The Commission's obligations are set out in the *International Air Services Commission Act 1992*. While it is important for the Commission to have regard to Australia's international obligations concerning the operation of international air services, international agreements do not themselves form part of Australia's domestic law and only have force and effect under domestic Australian law to the extent that Australia gives effect to its treaty obligations through domestic legislation. In the Australian context, the *International Air Services Commission Act 1992* requires Australian airlines to seek the Commission's approval for joint services.

JSA

9.7. The Commission is mindful that this application needs to be considered in the context of the JSA. As noted earlier, the JSA has been authorised by the Trade Practices Commission and includes joint fares, revenue pooling, schedule co-ordination and integrated marketing on the routes to which it applies. The JSA was authorised, however, on the basis of an application from Qantas which specifically excluded code sharing.

9.8. In dealing with the authorisation application relating to the JSA, the TPC found there were public benefits arising from that agreement. In its submission to the TPC Qantas claimed, in relation to benefits to Australian consumers, that:

The nature of this benefit can best be characterised as each airline treating the other airline's passengers as if they were its own in all respects, from interlining to tracing lost baggage. (para 8.14, Qantas submission to TPC)

9.9. As BA pointed out in its submission to the TPC:

With the alliance the sales forces of each airline will in future sell two products on an interchangeable basis – that of British Airways and that of Qantas. ... When we combine that with the interlineability of net fare tickets, intending passengers all over Europe wishing to fly to Australia will find ... one hundred and ten sales offices in numerous European cities who will in future ... focus intending tourists on Australia as a tourist destination (para 16 of BA submission of 5 November 1997).

9.10. The Commission regards the JSA as constituting an existing close working relationship between Qantas and BA. The routes subject to these code share applications are routes covered by the JSA.

9.11. Information submitted by BA and Qantas since the Draft Decisions has satisfied the Commission that there have been practical limitations in achieving the original objectives of the JSA. The Commission is satisfied that the code share agreement is likely to provide the necessary impetus for closer operational cooperation between the two airlines.

10. Assessment of the application in respect of the Australia – Thailand route

10.1. It is convenient to deal first with the application to vary Determination IASC/DET/9709 relating to the Australia - Thailand route. As code sharing is not explicitly permitted under the relevant air services arrangements the Commission is not satisfied that Qantas is able to secure the necessary regulatory approvals to operate as proposed. It cannot be of benefit to the public to vary a determination in a manner not permitted under the air services arrangements. Furthermore, the code share agreement lodged with the Commission does not include services on this route nor the capacity to be code shared on any given sector.

10.2. Qantas has suggested that the Commission could vary the Thailand Determination as requested “*subject to confirmation that the necessary bilaterals exist*”. The Commission is of the view that such action, which would effectively amount to making assumptions about the outcome of bilateral negotiations which have not yet been held, would be inappropriate and inconsistent with the requirement on the Commission that it be satisfied that a carrier can obtain necessary approvals.

10.3. The Commission proposes to defer further consideration of the application in so far as it applies to Determination IASC/DET/9709 until the relevant air services arrangements permit code sharing. The Commission will reconsider the application after the next round of negotiations between Australia and Thailand scheduled for December.

11. Assessment of the application in respect of the Australia – Singapore and Australia – UK routes against the paragraph 5 criteria

Tourism Benefits

The extent to which proposals will promote tourism to and within Australia. The Commission should have regard to:

- *the level of promotion, market development and investment proposed by each of the applicants; and*
- *route service possibilities to and from points beyond the Australian gateway(s) or beyond the foreign gateway(s).*

11.1. Although the Qantas claims in its original application were limited to tourism benefits said to accrue from:

- increased capacity to Queensland from the UK; and
- the implementation of a one stop, same aircraft daily B747 service between Brisbane and London

subsequent submissions expanded the original claims in a number of important respects.

11.2. In its submission in response to the Draft Decisions Qantas claimed a range of additional benefits arising from the code share proposal. These claimed benefits include broadened exposure of Australian destinations in UK/Europe, improved marketing capabilities (especially on thin routes such as Cairns, Darwin and Adelaide), and increased services between Melbourne and the UK. The submission from BA supports these claims.

11.3. Both Qantas and BA made submissions that access to the extensive BA European sales network will be an important tourism benefit consequence of the code share agreement. BA has advised that it has 116 sales offices and 2,954 sales staff in Europe. This compares with 8 Qantas sales offices and 238 sales staff in Europe. This will be of particular importance given the uncertainties surrounding Asian inbound tourism as a result of the economic problems in Asia referred to earlier.

11.4. Although the expectation was that, as a result of the JSA, “*the entire marketing forces of British Airways throughout the world, but particularly throughout Europe*”(see BA submission dated 5 November 1997 page 5, para 15) would be available to Qantas, the Commission is satisfied that the full potential has not been realised.

11.5. The two airlines have provided the Commission with sufficient information for the Commission to accept that the code share agreement is now considered by the

airlines as essential to developing a common culture and breaking down resistance among sales staff to selling tickets of the other airline.

Increased capacity to Brisbane

11.6. The claim that there would be increased capacity to Queensland from the UK is based on the introduction by BA of five B747 services per week on the London-Singapore-Brisbane route as of 26 October 1997, increasing to seven per week from 28 March 1998. In its submission Qantas assured the Commission that the additional BA flights “*would not have been mounted absent the code share agreement*” (see point 7 of Qantas submission of 8 October 1997).

11.7. Against that assurance, it must be noted that the proposal will lead to a corresponding reduction in the number of services operated by Qantas (with its own aircraft) on the Brisbane-Singapore route. The Commission analysed the position and concluded that the position on the Brisbane-Singapore route, were the application approved, would be:

Time period	Weekly QF flights	Weekly BA flights	Total weekly flights
Current	7 B747	None	7 B747
Oct 97- Mar 98	3 B747	5 B747	8 B747
Mar 98 onwards	None	7 B747	7 B747

11.8. Accordingly while the Commission accepts that there will, technically, be a short term increase in capacity to Brisbane from Singapore, this is quite transitory.

11.9. As the withdrawal of the Qantas B747 services to Brisbane from Singapore and the introduction of the BA B747 services from London to Brisbane via Singapore were publicly announced in advance of the application to the Commission and introduced after the Commission published its Draft Decisions proposing rejection of the code share, the Commission must consider whether the benefits claimed in relation to those services should be taken into account.

11.10. Qantas asked the Commission not to conclude that the new services were independent of the code share agreement merely because they have been introduced notwithstanding that the code share agreement had not been approved. Qantas submitted that the two carriers have been forced to introduce the Brisbane - Singapore schedule changes independent of the code share proposals, pending the Commission’s approval. BA supported that claim.

11.11. It would generally be inappropriate for the Commission to accept as a benefit supporting an application to it, a benefit which has already accrued. Accordingly, unless the Commission were satisfied that the new services would be withdrawn were the Commission to reject the code share proposal, it would not normally give any weight to past service changes. In this case, the Commission is not convinced that these services would be withdrawn.

11.12. However, the position is complicated in this case by the fact that the application to the Commission was late because Qantas initially took the view, based on its interpretation of correspondence with the ACCC and legal advice, that no approval was required. In those circumstances the Commission will, on this occasion, have regard to the new services although it is unlikely that the Commission would do so in future cases were the same circumstances to arise.

Improved service to Brisbane

11.13. As far as capacity between Queensland and the UK is concerned, the Commission's analysis indicates that the proposals will, if approved, reduce the total capacity by 3 B747 services per week. This is because, while BA will be introducing 7 B747 services per week via Singapore:

- BA will be ceasing the three B747 services which it presently operates via Bangkok and Sydney; and
- Qantas will be discontinuing seven B747 services from Singapore to Brisbane presently used, in part, to take connecting passengers from London.

11.14. In a broader context, however, there is a tourism benefit in increased capacity on the Australia-UK route as a whole because:

- BA will be rerouting three B747 services to Melbourne which previously terminated in Brisbane thereby providing daily BA operated services from the UK to Melbourne;
- Qantas has assured the Commission that aircraft freed up by the withdrawal of the seven Qantas services will be utilised by Qantas on other routes; and
- the replacement BA services from Brisbane will operate through to the UK rather than terminating in Singapore thereby providing additional capacity on the Australia-UK route.

11.15. Turning to the claim that there will be improved service between London and Brisbane, the Commission agrees that London - Brisbane passengers will benefit from a daily, same aircraft, three class service on BA. Transit times will be reduced by approximately two hours. The Commission accepts that there will be a superior service to either the current BA services (which travel via Sydney and Bangkok) or the current Qantas services (which require a four hour connection time at Singapore).

11.16. The Commission also notes the supportive submissions of the Queensland Government and the organisations representing tourism interests.

11.17. The ITOA expressed qualified support for the code share but questioned the implications of schedule changes for connecting services from India through Singapore and whether there will be adequate Singapore capacity during peak periods such as

Chinese New Year. The ONT supported the code share but was also concerned at any loss of capacity on the Singapore route.

11.18. As far as services from India are concerned, the Commission finds no material deterioration in connection times through Singapore for those services as a result of the code share. As to Singapore capacity, the Commission concludes that there will be a modest overall increase in capacity on the Australia – Singapore route as indicated in the table below.

Aggregate BA/QF Capacity on Australia – Singapore Route (B747 units)

Northern Summer 1997	48.85 units
Northern Winter 1997/98	51.05 units
Northern Summer 1998	50.65 units

Conclusion

11.19. The Commission concludes that Qantas has established a case sufficient for the Commission to accept that there are likely to be increased tourism benefits if the code share proposal were approved than are presently available under the Determinations.

Consumer Benefits

The extent to which proposals will maximise benefits to Australian consumers. The Commission should have regard to:

- *the degree of choice (including, for example, choice of airport(s), seat availability, range of product);*
- *efficiencies achieved as reflected in lower tariffs and improved standard of services;*
- *the stimulation of innovation on the part of incumbent carriers; and*
- *route service possibilities to and from points beyond the Australian gateway(s) or beyond the foreign gateway(s).*

11.20. Qantas claimed in its original applications that consumer benefits will accrue from:

- Qantas gaining access to Heathrow Terminal 4;
- reduced passenger disruption at all locations as a result of linking computer systems;
- greater choice of flights out of Brisbane; and
- improved choice of services out of Perth.

11.21. After publication of the Draft Decisions Qantas expanded its submissions in relation to consumer benefits, adding the following claims:

- the code sharing will see the removal of product and service differences between the two airlines; and
- code sharing will result in a better Brisbane -UK service via Singapore.

11.22. Before dealing with the specific Qantas claims, the Commission notes that many of the tourism issues considered by the Commission above apply equally to the analysis of consumer benefits.

Terminal 4 Heathrow

11.23. In relation to Terminal 4, Qantas has submitted that moving to Terminal 4 at Heathrow will provide passengers with improved connection times, more convenient connection processes and better facilities. While accepting the benefits to consumers of a move to Terminal 4, the Commission has previously expressed the view in Determination IASC/DET/9725 that the move to Terminal 4 could occur anyway as the JSA and also the number of Qantas/BA interline passengers to Europe makes the terminal move attractive regardless of code sharing on the Australia - Singapore and UK routes. BA has assured the Commission that, given the significant costs and dislocation which it incurred, BA would not have allowed Qantas into Terminal 4 without agreement to code share. The Commission accepts this assurance.

11.24. The Commission also accepts that the consumer benefits claimed by Qantas in relation to improved flexibility in switching between Qantas and BA flights, reduced inconvenience to passengers, convenient and shorter transfers to other international flights at Heathrow and access to better lounge facilities are likely to result from the move to Terminal 4 at Heathrow.

Enhanced passenger information

11.25. Qantas has submitted that code sharing provides the operating carrier with enhanced information about passengers and that such information offers the operating carrier the ability to provide the maximum level of assistance possible in flight disruption situations. Qantas subsequently advised the Commission that the information exchange can be used to ensure that frequent flyers receive the same level of benefit no matter on which airline they are flying in respect of personal preference matters such as seating and diet.

11.26. The subtlety of this and other similar submissions is that for a variety of reasons the airlines have not achieved these benefits under the JSA and believe that they require code sharing to do so.

11.27. The Commission finds it difficult to accept that these two major well managed airlines could require a code share agreement to deliver benefits already expected from

the broad ranging strategic alliance (the JSA) or that the signing of a code share agreement could have such a material effect on the systems and cultures of these organisations. However, the Commission is prepared to accept that the code share will add some impetus to the process.

Product/service improvement

11.28. The claim that code sharing will see the removal of product and service differences between the two airlines has a similar basis to the claim concerning passenger information. BA advised in its submission that

what is not apparent to the consumer is the considerable work to support the necessary alignment of systems, policies, and procedures to ensure that the travel experience is as consistent and seamless as possible for passengers regardless of which airline they travel on.

11.29. Qantas has acknowledged that, in theory, the matters referred to in paragraph 11.28 could have been achieved without code sharing. However, both airlines have presented information to the Commission which, on the face of it, establishes that code sharing provides the impetus for the necessary shift in corporate cultures and the commercial incentive to act and that the JSA was not sufficient for this to be achieved.

11.30. Qantas has stated that the removal of product and service differences will enable Qantas passengers and frequent flyers to experience the same level of service on BA that they expect on Qantas flights and vice versa for BA passengers. Qantas emphasised that it is working with BA to harmonise and improve standards across their whole networks, applying best practice principles and that this level of cooperation is not possible without code sharing. The commitment under the JSA was only that BA would treat Qantas passengers no differently from its own and vice versa.

11.31. The Commission has the same view in relation to this claim as in relation to the claim concerning enhanced passenger information: see para 11.27.

Choice of flights – Brisbane

11.32. Turning to the claim of greater choice of flights out of Brisbane, it is noted that the Queensland Department of the Premier and Cabinet and the Gold Coast Tourism Bureau have both supported the proposed code share notwithstanding the reduction in services out of Brisbane. The Commission has already dealt with that matter and the broader implications of substitute services in its consideration of tourism benefits above (see paragraphs 11.6 to 11.12 above). The loss of consumer choice following the recent withdrawal of Qantas operated aircraft to Singapore has to be balanced against other services provided as a result of the change.

Choice of flights – Perth

11.33. Turning to the claim of improved choice of services out of Perth, there will be no flight schedule or overall capacity changes from Perth as a result of the code share. In terms of benefits for Australian consumers there are no additional services and the proposal will merely add the QF code to the existing BA services and a BA code to the existing QF services.

Pricing decisions

11.34. Qantas has stated that each airline will be free to make its own pricing decisions. The Commission notes, however, that while there is some scope for fare innovation on the routes, such decisions are made in consultation with the other carrier and that generally Qantas and BA agree on common prices. No specific fare reductions are proposed as a consequence of the code share.

Conclusion

11.35. The Commission concludes that the net position in relation to consumer benefits is positive, but only marginally.

Trade Benefits

The extent to which proposals will promote international trade. The Commission should have regard to:

- *the availability of frequent, low cost, reliable freight services for Australian exporters and importers.*

11.36. BA has claimed that the later departure time from Brisbane to Singapore of the BA flights is more convenient for shippers of perishable exports, mail and urgent courier parcels, elapsed times are reduced and transshipment in Singapore is avoided.

11.37. There will be some loss of freight capacity between Brisbane and Bangkok/UK. On the other hand there will be an equivalent increase in freight capacity between Melbourne and Bangkok/UK. The Queensland Government supported the application and no submissions were lodged with the Commission suggesting that Queensland producers would suffer as a result of reduced Bangkok services.

11.38. The Commission concludes that the availability of available freight services for Australian exporters and importers is enhanced overall and accordingly the proposal is likely to produce trade benefits.

Competition Benefits

The extent to which proposals will contribute to the development of a competitive environment for the provision of international air services. The Commission should have regard to:

- *the need to develop strong Australian carriers capable of competing effectively with one another and the airlines of foreign countries;*
- *the number of Australian carriers using capacity on a particular route and the existing distribution of capacity.*
- *the extent to which applications are proposing to provide capacity on aircraft they will operate themselves as, in the long term, operation of capacity on own aircraft is likely to result in more competitive outcomes;*
- *the provisions of any commercial agreement between an applicant and another airline affecting services on the route but only to the extent of determining comparative competition benefit between competing proposals;*
- *any determinations made by the Australian Competition and Consumer Commission or the Australian Competition Tribunal in relation to a carrier operating or proposing to operate on all or part of the route; and*
- *any decisions on notifications made by the Australian Competition and Consumer Commission in relation to a carrier operating or proposing to operate on all or part of the route.*

11.39. Under the Minister's Policy Statement the organisation with primary responsibility for addressing competition issues is the ACCC. The ACCC made a submission in relation to Qantas' application and this is summarised in paragraphs 7.10 to 7.12 above. The ACCC has not taken a view in relation to Qantas and BA code sharing on the routes proposed.

11.40. Qantas has submitted that it should be permitted to code share with BA so that it can compete on an equal footing with other carriers. It argues, for example, that Virgin Atlantic, a UK designated carrier, is operating code share services between Australia and the UK on Malaysia Airlines. Qantas also argues that other carriers are effectively able to participate in joint services without the need for IASC approval.

11.41. The Commission notes in this regard that the development of joint services and international alliances is only a relatively recent phenomenon, but one which is developing considerable momentum. Because of this such arrangements are attracting increasing attention from regulatory authorities, primarily on competition policy grounds. Examples of arrangements under review are the proposed alliance between BA and American Airlines, alliances between American Airlines and a number of South American airlines and the recently announced European Union review of the Star Alliance involving United Airlines, Air Canada, Thai International, SAS, Lufthansa and

Varig. In addition, the US General Accounting Office¹ has recently proposed that the US Secretary of Transportation require US airlines to file annual data reports on their code shares.

11.42. The Commission does not agree that Qantas needs to operate the proposed code share to be placed on an equal footing with other carriers. Qantas and BA together have by far the largest share of passenger traffic between Australia and the UK. They account for 48% of the origin/destination traffic on the route. The percentage shares of each of the other airlines operating on the route are minor in comparison. The next three largest carriers (Singapore Airlines, Cathay Pacific and Malaysian Airlines) account in total for about 20% of the traffic.

11.43. Furthermore, the JSA removed competition between Qantas and BA permitting them to revenue pool and to operate cooperatively, advantages which other carriers do not presently have.

11.44. Qantas argued that the market is no less competitive than it was in 1995 when the TPC authorised the JSA. The Commission received no submissions opposing the code share on competition policy grounds.

11.45. Competitive analysis of code share arrangements is a complex matter.² Given that the JSA has ACCC approval and that the ACCC has said it would monitor

¹ GAO/RECD-95.99, April 1995

² See generally IASC research paper “Cooperative Agreements Between Airlines Providing International Air Services” (1997), USA Department of Transportation: “A Study of International Airline Code Sharing” (1994), Productivity Commission: “the Economic Impact of International Airline Alliances” (1997), Bureau of Transport and Communications Economics Working Paper 21: “Code Sharing In International Aviation” (1996).

performance under the code share, if approved, detailed analysis by this Commission of the competitive position is not necessary in this particular case.

11.46. Turning to the ACCC's point about computer reservation systems, if the code share services are approved, Qantas and BA would be able to list many more flights on the computer reservation systems used by travel agents. These flights, including the code share flights, will appear at or near the top of the first screen display and force some flights by other carriers on to second and subsequent screens. This is particularly the case on the Singapore route. While this will help Qantas and BA, it may lead to less choices being offered to consumers as the majority of bookings are made from the flights displayed on the first screen.

11.47. Qantas has supplied the Commission with simulations of CRS screens to assist in the assessment of the CRS impact in this case. These simulations show that on the Singapore route the introduction of the code share flights has no impact on screens showing non stop flights. The extra lines for the code share flights do have the effect, however, of pushing some of the one stop and connecting flights from the first page of the CRS to the second.

11.48. There is nothing in the way in which code share services would be displayed in CRS systems that is peculiar to this case. The Commission's inquiries indicate that the display arrangements are consistent with industry practice and the Commission does not propose to single out this particular code share proposal for special comment in this regard.

11.49. In terms of the competition benefits set out in the Policy Statement, the Commission concludes that there is insufficient evidence presently before it to decide whether the contribution to development of a competitive environment for the provision of international air services will be greater or less if the code share proposals are approved, than the contribution under existing determinations.

Industry Structure

The extent to which proposals will impact positively on the Australian aviation industry.

11.50. Qantas claimed in its original submission that code share services will enable it to increase its market share on the routes concerned, thus helping to strengthen an Australian airline. It stated that the expected impact on net profit in the first year of operation is in the order of \$10 million.

11.51. Qantas has since advised the Commission that this estimate is probably an underestimate as it does not take into account benefits from the claimed "ripple effect" from freeing up Qantas aircraft for use on other routes, or marketing benefits from the code share. Qantas estimates that taking all these factors into account could result in incremental revenue growth of the order of \$15-30m per annum although it has provided the Commission with no detailed financial data establishing how these figures have been

calculated.

11.52. Qantas has assured the Commission that Qantas aircraft withdrawn from the Singapore- Brisbane sector will be used initially on the Seoul and Johannesburg routes and will allow the commencement of a seventh service per week to the USA through Auckland. The availability of the aircraft will also cover the loss of other aircraft undergoing refitting in 1998.

11.53. These claimed benefits derive from the changes which have occurred at Brisbane. The Commission has already expressed a view about claims relating to past changes (see para 11.9 to 11.12) and need not repeat that view here. For the reasons stated earlier the Commission is prepared to accept the claims in this particular case.

11.54. The AIPA, ALAEA and FAAA submissions expressed legitimate concern over employment opportunities for their members. Given the Qantas assurance that the aircraft formerly used on the Brisbane - Singapore route are to be deployed by Qantas on other routes and given Qantas has placed orders for new aircraft (some of which will be used to operate additional capacity on the UK route), there are no grounds for the Commission to conclude that the proposals will have a negative employment impact.

11.55. The Commission has concluded that, in terms of industry structure, there are likely to be some positive effects for the Australian aviation industry.

Other criteria

Such other criteria as the Commission considers relevant.

11.56. In considering whether or not it should approve the Qantas applications, the Commission has considered the trends in the global aviation industry and the consequential impact on capacity usage by Qantas arising from the code share proposal. The Commission has decided that it is appropriate to consider the following additional criteria in this case:

- The Government's objective, evident from recent changes to the Australia - UK air services arrangements, of providing greater flexibility to Australian and British airlines on the route.
- The world wide trend, recognised in the Australia - UK air services arrangements, towards alliances between airlines, including code sharing.
- The effect, in public benefit terms, of a decrease in the utilisation of Australian capacity arising as a consequence of the proposed code share.

Flexibility on the Australia - UK route

11.57. The Commission sought advice from DoTRD concerning the ability of Qantas to implement its proposals under the relevant air services arrangements, particularly in relation to the UK route. DoTRD advised that the intention of the code sharing arrangements in the Australia - UK air services agreement is to minimise government intervention and to provide airlines with maximum flexibility to achieve commercial efficiency. It stated that code sharing is unlimited between airlines of the UK and Australia and suggested that the Commission act liberally.

11.58. The decision by the Australian and UK Governments to liberalise air service arrangements between the two countries is a relevant matter for the Commission to take into account and favours approval of the proposals. Liberalisation is likely to offer opportunities to achieve many of the public benefits to which the Policy Statement refers.

Trend towards alliances

11.59. The Commission has previously stated that while code share services have become a feature of modern international aviation and there is some evidence that they can deliver benefits, particularly on thin routes, there is a great variety of such arrangements and each must be assessed according to its terms. The Commission has also stated that joint service arrangements, by their very nature, limit the scope for competition. Where independent operations are a realistic alternative, they are to be preferred (see Determination IASC/DET/9508).

11.60. There is a global trend towards airline alliances. While such alliances often involve code sharing, it is not an essential element. For example, the Star Alliance referred to in Qantas' submissions does not involve code sharing between all the partners. Qantas has pointed out, however, that Star Alliance members do code share on other routes where bilateral arrangements allow. The Commission notes that they do not code share on the routes which are the subject of this application and that the alliance is currently under investigation by the European Union.

11.61. It is clear that regulatory authorities in other countries are assessing code shares and other alliance proposals. As noted in para 11.41, the proposed alliance between American Airlines and BA, proposed alliances between American Airlines and a number of South American carriers and the Star Alliance are all presently under review. In addition, the US Department of Transportation has recently directed all US airlines to file quarterly reports of their trans Atlantic code share operations.³

11.62. While the Qantas application is consistent with the global trend towards code sharing and Qantas and BA have made strong submissions that code sharing is necessary to fully realise the objectives of the JSA, the Commission considers that many

³ DoT Order 96-5-38, 29 May 1996

of the benefits to be gained from an alliance with BA should have already been achieved through implementation of the JSA.

Under utilisation of capacity

11.63. In paragraph 2.3 above it was noted that the capacity to be exchanged under the proposed code share operation is not equal. If implemented, the code share would result in Qantas under-utilising its capacity on the Singapore route initially by 2.95 B747 units of capacity per week.

11.64. The Policy Statement makes clear that use of capacity is of benefit to the public. A corollary of this is that less use of capacity is of less benefit to the public. Qantas has stated that it is erroneous to conclude that less use of capacity is of less benefit to the public. The Commission does not agree with this view, especially in circumstances where own operated capacity is to be replaced, in part, by code share capacity. The Commission accepts, however, that the consequent release of aircraft which Qantas has assured the Commission it will use on other routes is to be taken into account as is the need to withdraw aircraft periodically for refit.

11.65. The Commission concludes that, under the first additional criterion the result is positive, under the second it is neutral and under the third it is negative.

Conclusion

11.66. Applying the test set out at paragraph 9.2 and for the reasons set out above the Commission has concluded, on balance, that the application should be approved insofar as it applies to the Australia - Singapore and Australia - UK routes.

12. Role of the ACCC

12.1. The Policy Statement and its associated Explanatory Memorandum make clear that the ACCC retains primary responsibility for competition policy matters. Nothing in the Commission's decisions should be taken as indicating either approval or disapproval by the ACCC. The Commission's decisions are made without prejudicing, in any way, possible future consideration by the ACCC of the code share agreement or operations under it.

13. Other issues

13.1. The Commission will specify in the relevant determinations that Qantas may use the allocated capacity to operate joint services with BA consistent with finalised code share agreement a signed copy of which was supplied to the Commission.

13.2. The Commission normally includes conditions in determinations approving

code shares that the Australian carrier must price and sell its services on the route independently and that it must not share or pool revenues. To the extent that these activities are allowed by an authorisation issued by the Trade Practices Commission (TPC) the Commission will not be including such conditions in the varied determinations for the Singapore and UK routes. However the Commission will be inserting conditions that such activities will not be allowed in the event that the ACCC withdraws the TPC authorisation in relation to these matters.

13.3. The Commission notes that implementation of the code share will result in Qantas having excess capacity on the Singapore route. The Commission expects that Qantas would apply to hand back any excess capacity on this route at the earliest opportunity.

14. Decision (IASC/DEC/9723 - Singapore route)

14.1. The Commission approves the variation of Determinations IASC/DET/9306, IASC/DET/9609, IASC/DET/9712 and IASC/DET/9713 allocating capacity on the Australia - Singapore route to Qantas to permit code sharing with British Airways on the routes covered by those Determinations so that the capacity may be used by Qantas to provide services jointly with British Airways in accordance with the code share agreement dated 5 October 1997, insofar as that agreement relates to the Australia – Singapore route, or as varied in relation to the number of services or number of seats the subject of the code share, subject to the following conditions:

- the routes to be served and the number of services or number of seats the subject of the code share may be varied with the prior approval of the Commission;
- the approval to code share lapses if:
 - an application for authorisation of the code share agreement under the *Trade Practices Act 1974* is made and finally rejected by the Australian Competition and Consumer Commission or the Australian Competition Tribunal, in the event of review by that Tribunal; or
 - a final order is made revoking the authorisation of the Joint Services Agreement by the Australian Competition and Consumer Commission or Australian Competition Tribunal, in the event of review by that Tribunal; or
 - a court makes final orders that the code share agreement is contrary to the *Trade Practices Act 1974*;
- Qantas may only price and market its services, or

share or pool revenues, on the route jointly with British Airways as long as such practices are authorised under the *Trade Practices Act 1974* or otherwise authorised by the Australian Competition and Consumer Commission or Australian Competition Tribunal, in the event of review by that Tribunal; and

- Qantas must take all reasonable steps to ensure that passengers are informed, at the time of seat reservation, of the carrier actually operating the flight.

14.2. This Decision is not to be construed as affecting any possible consideration of the code share agreement by the Australian Competition and Consumer Commission on matters which are the responsibility of that commission.

15. Decision (IASC/DEC/9724 - UK route)

15.1. The Commission approves the variation of Determinations IASC/DET/9707 and IASC/DET/9727 allocating capacity on the Australia – United Kingdom route to Qantas to permit code sharing with British Airways on the routes covered by those Determinations so that the capacity may be used by Qantas to provide services jointly with British Airways in accordance with the code share agreement dated 5 October 1997, insofar as that agreement relates to the Australia – United Kingdom route, or as varied in relation to the number of services the subject of the code share, subject to the following conditions:

- the routes to be served and the number of services the subject of the code share may be varied with the prior approval of the Commission;
- the approval to code share lapses if:
 - an application for authorisation of the code share agreement under the *Trade Practices Act 1974* is made and finally rejected by the Australian Competition and Consumer Commission or the Australian Competition Tribunal, in the event of review by that Tribunal; or
 - a final order is made revoking the authorisation of the Joint Services Agreement by the Australian Competition and Consumer Commission or Australian Competition Tribunal, in the event of review by that Tribunal; or
 - a court makes final orders that the code share agreement is contrary to the *Trade Practices Act 1974*;

- Qantas may only price and market its services, or share or pool revenues, on the route jointly with British Airways as long as such practices are authorised under the *Trade Practices Act 1974* or otherwise authorised by the Australian Competition and Consumer Commission or Australian Competition Tribunal, in the event of review by that Tribunal; and
- Qantas must take all reasonable steps to ensure that passengers are informed, at the time of seat reservation, of the carrier actually operating the flight.

15.2. This Decision is not to be construed as affecting any possible consideration of the code share agreement by the Australian Competition and Consumer Commission on matters which are the responsibility of that commission.

Dated: 4 December 1997

James K Bain
Chairman

Russell V Miller
Member

A. Legislative framework

1. Under section 21 of the *International Air Services Commission Act 1992* (the Act) an Australian carrier to whom a determination allocates capacity may at any time apply to the Commission for the determination to be varied.
2. Section 10(2) of the Act requires the Commission to conduct a review of a determination if the Australian carrier to whom the determination allocates capacity applies to the Commission under section 21 for the determination to be varied. Before conducting a review under section 10 the Commission must, by notice, invite submissions about the review of the determination (subsection 22(1)).
3. Section 24 of the Act relates to decisions on applications for variations. Under subsection 24(1), subject to this section, the Commission must, having conducted a review to decide an application for a determination to be varied, make a decision:
 - (a) confirming the determination; or
 - (b) varying the determination in a way that gives effect to the variation requested in the application.
4. Section 24(2) of the Act states the Commission must not make a decision varying the determination in a way that varies, or has 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.
5. In exercising its powers, the Commission must take account of the objects of the Act as set out in section 3 and of the requirement of section 6(3)(b) that the Commission have regard to Australia's international obligations concerning the operation of international air services.
6. Section 6(3)(a) also requires the Commission to comply with policy statements made by the Minister under section 11.
7. The section 11 Policy Statement dated 23 April 1997, includes criteria to be applied by the Commission in assessing the benefit to the public of allocations of capacity.
8. Subject to section 6, section 4 relates to general criteria for assessing benefit to the public. In particular:
 - Use of Australian carrier entitlements
 - (a) Subject to (b), the use of the entitlements of Australian carriers under a bilateral arrangement is of benefit to the public.
 - Carrier capabilities

(b) It is not of benefit to the public for the commission to allocate capacity to Australian carriers unless such carriers:

(i) are reasonably capable of obtaining the necessary approvals to operate on the route; and

(ii) are reasonably capable of implementing their proposals.

9. Section 6.3 requires the Commission to assess the benefit to the public in circumstances where a carrier requests a variation of a determination to allow it flexibility in operating its capacity, including changes in seating or freight carrying arrangements or configurations, aircraft type or points to be served, which may result in a minor increase in capacity. The Commission need only satisfy itself that the proposed variation does not adversely affect the application of the criteria in section 4.