

# DETERMINATION

**DETERMINATION:** IASC/DET/9823  
**THE ROUTE:** SWITZERLAND  
**THE APPLICANT:** QANTAS AIRWAYS LIMITED  
(ACN 009 661 901)  
**PUBLIC REGISTER FILES:** IASC/APP/98022  
IASC/COM/92005

## 1 The application

1.1 The Commission published a notice inviting applications for new capacity on the Switzerland route. The only application received was from Qantas Airways Limited (Qantas) seeking an allocation of 1.5 frequencies per week in each direction between Australia and Switzerland.

1.2 Qantas proposes to use the capacity under a reciprocal code share arrangement with Swissair whereby Qantas would code share on Swissair operated flights between Singapore and Zurich, and Swissair would code share on Qantas operated flights between Singapore and Sydney.

1.3 The Commission published a notice inviting submissions from interested parties about the Qantas application. No submissions were received.

## 2 Provisions of relevant Air Services Agreements

2.1 The Australia – Switzerland Air Services Agreement of 1 February 1993 and the Memorandum of Understanding (MOU) of 16 June 1998 provide for designated carriers to operate services in accordance with agreed capacity entitlements.

2.2 The MOU provides capacity entitlements for the designated airlines of each country totalling 3 frequencies per week from 1 October 1998, increasing to 5 frequencies from 1 October 1999 and 7 frequencies from 1 October 2000.

2.3 Under the MOU, when designated airlines of Australia and Switzerland enter into code share arrangements with each other, each code share service is counted as the equivalent of 0.5 of a frequency.

Additional capacity is available under the MOU for code sharing between designated airlines on the route and airlines of third countries.

### 3 Commission's assessment

#### Capacity allocation

3.1 Allocations of capacity are made by the Commission in accordance with the *International Air Services Commission Act 1992* (the Act), and the Minister's Policy Statement (No 3 of 23 April 1997) which was issued under section 11 of the Act.

3.2 The Act and Policy Statement provide that if there are no competing applications or submissions, the relevant criteria for the Commission in considering an application for capacity are whether the applicant is reasonably capable of both obtaining the necessary approvals to operate on the route and implementing its proposal.

3.3 Qantas is an established international carrier which has the technical and financial resources to implement its proposal. The Commission concludes that Qantas is reasonably capable of obtaining the necessary approvals and of implementing its proposal and that the allocation to Qantas of 1.5 frequencies per week in each direction between Australia and Switzerland would be of benefit to the public.

#### Code sharing

3.4 In relation to Qantas' proposed joint services with Swissair, under sub-section 15(2)(e) of the *International Air Services Commission Act 1992*, a carrier cannot use allocated capacity by providing services jointly with any other carrier without the prior approval of the Commission. For this purpose the Commission has previously decided that joint services include, inter alia, code sharing: See IASC/DET/9616.

3.5 The Commission may determine whether or not a code sharing proposal should be approved utilising the public benefit criteria contained in paragraph 5 of the Policy Statement. This is consistent with the objects set out in section 3 of the Act.

3.6 Qantas has provided the Commission with a commercial-in-confidence copy of the code share agreement with Swiss Air dated 9 October 1998. A summary of the agreement at the draft stage was included in the Qantas application and appears on the Public Register.

3.7 The code share agreement provides that Qantas would be allocated 21 seats on each of three Swissair operated flights per week between Singapore and Zurich, and Swissair would be allocated 35 seats on each of three Qantas operated flights per week between Singapore and Sydney. The carriers would price and market their capacity independently as well as independently establish fares on the code share services. The proposed code share arrangements allow each carrier to market three services per week between Australia and Switzerland as against none if there was no reciprocal arrangement.

3.8 The Commission has previously recognised that code share arrangements may provide benefits on thin routes, although by their very nature they limit the scope for competition. As the Commission noted in IASC/DET/9508 in relation to the Australia-Canada route, where independent operations are a realistic alternative they are to be preferred.

3.9 In accordance with the Memorandum of Understanding between the Commission and the Australian Competition and Consumer Commission (ACCC), implemented to minimise duplication between the two bodies, the Commission sought the ACCC's view on the code share proposal.

3.10 The ACCC has stated that it is unlikely that the proposed code share operations would substantially lessen competition within the meaning of the *Trade Practices Act 1974* or cause any major consumer protection problems. The code share operations with Swissair to Singapore and Switzerland should not result in a reduction in competition as no direct services currently exist. The proposal should help establish a direct service in competition with those services offered by fifth freedom carriers via points in South East Asia.

3.11 The Commission concludes that it should approve the code share, subject to certain conditions referred to below, because it allows Qantas to open up a new service on a thin and developing route offering opportunities to develop travel and tourism between Australia and Switzerland. The Commission accepts the ACCC view that the proposal is unlikely to substantially lessen competition.

## 4 Other issues

4.1 The Commission notes that Qantas proposes to fully utilise the capacity from 25 October 1998. The Commission will require Qantas to fully utilise the capacity within 90 days of the date of the determination, or within such other period as approved by the Commission.

4.2 Qantas has sought a determination for five years from the date of the determination. The Commission will make such a determination.

4.3 The Commission's view is that this determination should include the usual limitations on changes in the ownership and control of Qantas. These are specified below.

## 5 Role of the ACCC

5.1 Notwithstanding the views expressed in paragraph 3.10 above, nothing in the Commission's decision should be taken as indicating either approval or disapproval by the ACCC. The Commission's decision is made without prejudicing, in any way, possible future consideration by the ACCC of the code share agreement or operations under it.

## 6 Determination allocating shelf capacity on the Switzerland route to Qantas (IASC/DET/9823)

6.1 The Commission finds that an allocation of capacity to Qantas on the Australia – Switzerland route as sought would be of benefit to the public.

6.2 The Commission makes a determination in favour of Qantas, allocating 1.5 frequencies of capacity per week in each direction between Australia and Switzerland under the Australia - Switzerland Air Services Agreement.

6.3 The determination is for five years from the date of the determination.

6.4 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity within 90 days of the date of the determination or by such other date approved by the Commission;
- only Qantas is permitted to utilise the capacity;
- the capacity may be used by Qantas to provide services jointly with Swissair in accordance with the code share agreement between Qantas and Swissair dated 9 October 1998, subject to the following conditions:

- any variations to Schedule 1 of that agreement, in relation to the number of flights or seats, must receive the approval of the Commission prior to implementation;
- Qantas must price and sell its services on the route independently of Swissair;
- Qantas must not share or pool revenues with Swissair; and
- Qantas must take all reasonable steps to ensure that passengers are informed at the time of ticket reservation that Swissair is operating the Singapore – Zurich sector;
- Qantas is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
  - results in the designation of the airline as an Australian carrier under the Australia - Switzerland Air Services Agreement being withdrawn; or
  - has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of Qantas or be in a position to exercise effective control of Qantas, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and Head Office of Qantas are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia – Switzerland Air Services Agreement.

Dated: 22 October 1998

Russell V Miller      Michael L Lawriwsky      Stephen Lonergan

**Chairman**

**Member**

**Member**