

# DETERMINATION

**DETERMINATION:** IASC/DET/9921  
**THE ROUTE:** TAIWAN  
**THE APPLICANT:** QANTAS AIRWAYS LIMITED  
(QANTAS) (ACN 009 661 901)

## 1 The application

1.1 On 12 November 1999 Qantas applied for an allocation of unlimited freight capacity in each direction on the Taiwan route. Qantas proposes to code share on one weekly B747 service operated by Evergreen International Airlines (Evergreen), possibly as a first step to own operations under wet lease aircraft arrangements in the future. Qantas notes that where capacity is not limited under a bilateral arrangement, only the criteria in paragraph 4 of the Minister's Policy Statement are applicable to the Commission's consideration. Qantas submits that its proposal meets the paragraph 4 criteria.

1.2 The Commission published a notice inviting other applications for all or any part of the capacity and submissions from interested parties about the application. No applications or submissions were received.

1.3 In accordance with the Memorandum of Understanding between the Commission and the Australian Competition and Consumer Commission (ACCC), the Commission sought the ACCC's view on the code share proposal. The ACCC had no comments on the proposal.

1.4 All non-confidential material supplied by the applicant is filed on the Register of Public Documents. Confidential material supplied by the applicant is filed on the Commission's confidential register.

## 2 Provisions of relevant air services arrangements

2.1 The air services arrangements between the Taiwan Civil Aeronautics Administration and the Australian Commerce and Industry Office in Taipei dated 19 March 1998 provide for authorised Australian airlines to operate unlimited freighter services between Australia and Taiwan.

2.2 The authorised airlines are entitled to perform any of their agreed services with code sharing with any airline.

### **3 Commission's assessment**

3.1 Under the Minister's Policy Statement the relevant criteria to be applied in deciding whether to allocate capacity where capacity is unlimited, there is only one applicant and no other submissions, is whether the applicant is reasonably capable of obtaining the necessary approvals and of implementing its proposals.

3.2 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 unlimited freight capacity on the Taiwan route would be of benefit to the public.

3.3 A carrier cannot use allocated capacity by providing services jointly with any other carrier, including code sharing, without the prior approval of the Commission.

3.4 In this case, there is no limit on freight capacity. There have been no submissions raising concerns about the Qantas proposal. The Commission will authorise the capacity allocated to Qantas in this determination being used on a code share basis on services operated by Evergreen, subject to the conditions set out below.

### **4 Other issues**

4.1 The Commission notes that Qantas proposes to commence code share services from 31 January 2000. The Commission will require Qantas to commence services from no later than that date.

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 Determination allocating capacity on the Taiwan route to Qantas (IASC/DET/9921)**

5.1 The Commission makes a determination in favour of Qantas, allocating unlimited capacity in each direction on the Taiwan route under the air services arrangements between the Civil Aeronautics Administration in Taipei and the Australian Commerce and Industry Office.

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

5.3 The determination is subject to the following conditions:

- Qantas is required to commence services from no later than 31 January 2000 or from such other date approved by the Commission;
- only Qantas is permitted to utilise the capacity;
- Qantas is permitted to utilise the capacity to provide services jointly with Evergreen in accordance with:
  - the code share agreement dated 9 September 1999 lodged with the Commission; and
  - any new joint service arrangements between Qantas and Evergreen for operations on the Taiwan route, whether or not it replaces the existing agreement, with the prior 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 nomination of the airline under the air services arrangements between the Australian Commerce and Industry Office and the Civil Aeronautics Administration in Taipei 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 nominated by the Australian Government for the purposes of the air services arrangements between the Civil Aeronautics Administration in Taipei and the Australian Commerce and Industry Office.

Dated: 16 December 1999

Russell Miller  
Chairman

Michael Lawriwsky  
Member

Stephen Lonergan  
Member