



INTERNATIONAL AIR SERVICES COMMISSION

DETERMINATION

DETERMINATION NO: [2003] IASC 113
THE ROUTE: ITALY
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901)
PUBLIC REGISTER FILE: IASC/APP/200314

1 The application

1.1 On 13 June 2003, Qantas applied for an allocation of 600 seats per week of third country code share capacity the Italy route under the Australia – Italy air services arrangements.

1.2 Qantas has decided to suspend its two B747 services per week to Rome from 7 September 2003 due to unsustainable financial losses. To continue serving the Italy market Qantas proposes to offer four code share services per week on Cathay Pacific over Hong Kong from 9 September 2003.

1.3 On 19 June 2003, the Commission published a notice inviting applications for capacity on the Italy route or submissions about the Qantas application. Virgin Blue submitted that it had no objections to the Qantas application on the Italy route.

1.4 All material supplied by the applicant and submitter is filed on the Register of Public Documents. Any confidential material supplied by the applicant is filed on the Commission's confidential register.

2 Provisions of relevant air services arrangements

2.1 The operation of the proposed services requires entitlements under both the Australia – Italy and the Australia – Hong Kong air services arrangements. The Australia – Italy air services arrangements allow the designated airlines of Australia to market a total of 1000 third-country code share seats per week in each direction.

2.2 While the operation of the proposed services will not require an additional allocation of capacity under the Australia - Hong Kong air services arrangements the operations will require approval by the Hong Kong aviation authorities of the proposed bilateral country code share operations beyond Hong Kong. Currently there is no provision within the air services arrangements between Australia and Hong Kong for code services.

2.3 The Commission understands that the aeronautical authorities have reached an interim arrangement allowing the code share, pending further discussion between the Australian and Hong Kong aviation authorities.

3 Commission's consideration

3.1 Under paragraph 6.2 of the Minister's Policy Statement, in the absence of submissions about or opposing an application, the Commission is required only to apply the criteria in paragraph 4 of the Policy Statement. Under paragraph 4 the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. For an established international carrier such as Qantas, this means that there is public benefit arising from the use of the entitlements. Therefore, the Commission concludes that an allocation to Qantas of 3.5 frequencies per week in each direction on the Italy route would be of benefit to the public.

3.2 Section 15(2)(e) of the Act specifies that the Commission must include a condition in determinations stating the extent to which the carrier may use that capacity in joint services with another carrier. Qantas has stated that the capacity would be used to code share with Cathay Pacific. The Commission will allocate the capacity on the condition that the code share agreement is consistent with the draft code share agreement provided by Qantas and that the Commission approves the final code share agreement before services commence.

4 Determination allocating capacity on the Italy route to Qantas ([2003] IASC 113)

4.1 The Commission makes a determination in favour of Qantas, allocating a total of 600 third country code share seats per week in each direction on the Italy route.

4.2 The Determination is for five years from the date of this Determination and is subject to the following conditions:

- Qantas is required to fully utilise the capacity from 30 November 2003;
- only Qantas is permitted to utilise the capacity;
- the capacity may be used by Qantas to provide joint services with Cathay Pacific International in accordance with:
 - the finalised code share agreement being approved by the Commission, with such additional conditions (if any) as the Commission may require, prior to the commencement of services;
 - any subsequent code share agreement between Qantas with Cathay Pacific for operations on the Australia - Italy route, whether or not it replaces the existing agreement, with the prior approval of the Commission; and
- under any code share agreement with Cathay Pacific:

- Qantas must price and sell its services on the route independently of Cathay Pacific;
- Qantas must not share or pool revenues under any such agreement;
- to the extent that the capacity is used to provide joint services on the route, Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- 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 - Italy air services arrangements 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 - Italy air services arrangements.

Dated: 8 August 2003

Ross Jones
Chairman

Michael Lawriwsky
Member

Stephen Lonergan
Member