



Australian Government

International Air Services Commission

DETERMINATION

Determination:	[2004] IASC 113
The Route:	Switzerland
The Applicant:	Qantas Airways Limited (ACN 009 661 901) (Qantas)
Public Register:	IASC/APP/200416

1 The application

1.1 On 6 August 2004, Qantas applied for an allocation of 14 third party code share services on the Switzerland route. Qantas currently code shares, on a daily basis, on British Airways services between London and Geneva. Qantas now proposes to code share on two additional daily services between London and Geneva. The first of these daily services is proposed to be introduced in the current Northern Summer scheduling period and the other from the beginning of the Northern Winter scheduling period at the end of October 2004.

1.2 On 12 August 2004, the Commission published a notice inviting applications from interested parties for some or all of the capacity sought by Qantas. No applications were received. All material supplied by the applicant is filed on the Commission's Register of Public Documents.

2 Provisions of relevant air services arrangements

2.1 Under the air services arrangements between Australia and Switzerland, designated airlines of Australia may enter into code sharing arrangements as marketing airlines with airlines of third countries on up to a total of 21 frequencies per week in each direction.

2.2 Qantas already has an allocation of seven frequencies per week under Determination [2002] IASC 107. Allocation of a further 14 frequencies will fully utilise the bilateral entitlements.

3 Delegate's consideration

3.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (the Act) and regulation 3A of the *International Air Services Commission Amendment Regulations 2003 (No.1)*, the delegate of the Commission considers the Qantas application.

3.2 Under paragraph 6.2 of the Minister's Policy Statement (No.5), of 19 May 2004, 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.

3.3 The delegate concludes that an allocation to Qantas of 14 third-country code share frequencies per week in each direction on the Switzerland route would be of benefit to the public.

3.4 Section 15(2)(e) of the Act, 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. The Commission will authorise the use of the capacity in joint services with British Airways on terms consistent with those in the other determinations allocating capacity to Qantas in which the operation of joint services between the two carriers is authorised.

4 Determination allocating capacity on the Switzerland route to Qantas Airways Limited ([2004] IASC 113)

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating 14 third-country airline code share frequencies per week in each direction between Australia and Switzerland under the Australia – Switzerland air services arrangements.

4.2 The determination is for five years from the date of this determination.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 30 November 2004;
- 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; or
 - any new code share agreement, whether or not it replaces the existing agreement, with the prior approval of the Commission;

- under the arrangements with British Airways, Qantas may only price and market its services, or share or pool revenues/profits 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 Tribunal, in the event of review by that Tribunal;
- 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 – Switzerland 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 – Switzerland air services arrangements.

Dated: 1 September 2004

Michael Bird
Executive Director
Delegate of the IASC Commissioners