



## Australian Government

### International Air Services Commission

#### DECISION

<b>Decision:</b>	<b>[2004] IASC 202</b>
<b>Variation of :</b>	<b>[2001] IASC 107, [2001] IASC 116, [2002] IASC 104 and [2002] IASC 108</b>
<b>The Route:</b>	<b>Japan</b>
<b>The Applicant:</b>	<b>Qantas Airways Limited (ACN 009 661 901) (Qantas)</b>
<b>Public Register:</b>	<b>IASC/APP/200405</b>

#### 1 The application

1.1 Qantas applied to the Commission on 19 March 2004 seeking an extension of the current authorisations that permit Japan Airlines (JAL) to code share on Qantas services between Tokyo and Cairns and Tokyo and Melbourne for the remaining period of the relevant capacity allocations.

1.2 The Commission's approval of the current arrangements expires on 30 June 2004.

1.3 Determinations [2001] IASC 107, [2001] IASC 116 and [2002] IASC 104 allocate 1.2, 2.4 and 4.6 B767-200 units of capacity respectively on the Japan route. Decision [2002] IASC 218 of 31 May 2002 varied the conditions of the determinations to permit JAL to code share on Qantas services to Melbourne until 30 June 2004.

1.4 Determination [2002] IASC 108 of 22 April 2002, which renewed determination IASC/DET/9701, allocates 45.6 B727-200 units on the Japan route and approved the continuation of the code share arrangements between Tokyo and Cairns until 30 June 2004.

1.5 Code share arrangements between JAL and Qantas between Tokyo and Cairns first came into operation on 30 March 1997, at that time both Ansett International and All Nippon Airways (ANA) operated on the Japan route.

1.6 The Commission published a notice on 25 March 2004 inviting submissions about the application. Submissions were received from the Australian Tourist Commission (ATC), the Cairns Port Authority (CPA), the Queensland Government's Aviation Steering Committee, Advance Cairns, Tourism Tropical North Queensland (TTNQ), Tourism Victoria, Daikyo Group and the Australian Competition and Consumer Commission (ACCC).

1.7 Material supplied by the applicant and all submissions are filed on the Register of Public Documents.

## 2 Current Services

2.1 Australian Airlines operates the following weekly services, effective from the start of the Northern Summer 2004 scheduling period:

- 7xB767-300 Coolangatta-Cairns-Osaka and vv;
- 6xB767-300 Sydney-Cairns-Nagoya and vv;
- 1xB767-300 Cairns-Nagoya and vv; and
- 3xB767-300 Cairns Fukuoka and vv

2.2 Qantas operates the following weekly services, effective for the Northern Summer 2004 scheduling period:

- 3xB767-300 Melbourne-Sydney-Tokyo (Narita A)-Melbourne (JAL code shares – 53 seats per flight);
- 4xB767-300 Melbourne-Tokyo (Narita A) and vv (JAL code shares – 53 seats per flight);
- 7xB767-300 Brisbane-Cairns-Tokyo (Narita B)-Cairns-Sydney - (JAL code shares – 191 seats per flight);
- 3xB767-300 Perth-Tokyo (Narita A) and vv;
- 7xB767-300 Sydney-Cairns-Tokyo (Narita B)-Cairns-Brisbane; and
- 7xB747 Sydney-Tokyo (Narita A) and vv;

2.3 JAL operates the following weekly services:

- 7xB747 Brisbane-Tokyo and vv (Qantas code shares – 191 seats per flight);
- 7xB747 Sydney-Tokyo and vv;
- 7xB747 Sydney-Osaka-Brisbane-Sydney (Qantas code shares – 110 seats per flight).

2.4 Currently, Australian Airlines is offering 4,606 seats for sale per week, JAL are offering 9,268 seats per week and Qantas 9,045 seats per week, a combined total of 22,919 seats per week.

### 3 Traffic Levels

3.1 Around 90 percent of the Origin Destination traffic on the route originates in Japan. The table below includes moving annual total data for Japanese visitors arriving in Australia. Using a moving annual total reduces the scatter in the data and allows the longer term impacts to be seen. In this case the impact of the events of September 11, the Iraq war and SARS are evident in an otherwise slowly growing market.

#### Japanese Visitor Arrivals in Australia - Moving Annual Total

	2001	% CHG	2002	% CHG	2003	% CHG	2004	% CHG
YE Jan	737,417	4.7%	685,749	-7.0%	743,563	8.4%	644,136	-13.4%
YE Feb	735,562	3.6%	677,231	-7.9%	746,024	10.2%	647,428	-13.2%
YE Mar	733,306	2.9%	676,765	-7.7%	736,050	8.8%		
YE Apr	738,277	3.9%	676,043	-8.4%	721,368	6.7%		
YE May	736,123	3.7%	678,416	-7.8%	699,811	3.2%		
YE Jun	736,794	3.4%	680,062	-7.7%	678,930	-0.2%		
YE Jul	737,891	3.7%	679,205	-8.0%	662,222	-2.5%		
YE Aug	744,501	4.7%	674,033	-9.5%	650,094	-3.6%		
YE Sep	745,908	5.7%	677,288	-9.2%	649,545	-4.1%		
YE Oct	732,975	3.9%	698,909	-4.6%	643,321	-8.0%		
YE Nov	705,739	-1.6%	722,240	2.3%	641,917	-11.1%		
YE Dec	692,429	-4.9%	737,489	6.5%	643,742	-12.7%		

Source: Australian Bureau of Statistics

3.2 Australian resident departures to Japan continue to increase at a modest rate.

#### Australian Resident Departures to Japan - Moving Annual Total

	2001	% CHG	2002	% CHG	2003	% CHG	2004	% CHG
YE Jan	67,871	-0.1%	75,700	11.5%	76,266	0.7%	79,502	4.2%
YE Feb	66,349	-3.1%	76,686	15.6%	77,394	0.9%	79,511	2.7%
YE Mar	68,199	2.2%	76,174	11.7%	77,808	2.1%		
YE Apr	69,251	2.5%	75,853	9.5%	77,139	1.7%		
YE May	70,397	3.9%	75,603	7.4%	76,569	1.3%		
YE Jun	71,300	5.7%	75,810	6.3%	76,551	1.0%		
YE Jul	72,564	6.2%	75,396	3.9%	75,807	0.5%		
YE Aug	73,998	7.5%	74,149	0.2%	77,364	4.3%		
YE Sep	75,110	12.5%	74,992	-0.2%	77,231	3.0%		
YE Oct	74,671	10.2%	75,396	1.0%	78,065	3.5%		
YE Nov	73,949	9.9%	76,055	2.8%	78,700	3.5%		
YE Dec	75,511	11.0%	75,587	0.1%	79,618	5.3%		

Source: Australian Bureau of Statistics

3.3 Carriage of traffic between Australia and Japan is dominated by the direct carriers - JAL, Australian Airlines and Qantas. Overall traffic levels for year ended January and February 2004 are well below the year ended January and February levels in 2001, 2002 and 2003.

## **4 Provisions of the relevant air services arrangements**

4.1 The Australia – Japan air services arrangements permit code sharing between the designated airlines of Australia and Japan. Where the designated airlines code share, capacity is counted as being exercised only by the operating carrier. As a consequence the Commission is not required to approve Qantas code sharing on JAL services, for example, Qantas' selling of seats on JAL's Brisbane – Tokyo services.

## **5 Summary of submissions received**

### **Qantas**

5.1 In its application Qantas drew the Commission's attention to circumstances under which the code share was previously approved in April 2002. At the time the Commission approved the code share for two years to provide a reasonable period over which to assess the impact of the events of September 11 and the withdrawal of Ansett International's service to Osaka and with it the loss of All Nippon Airways (ANA) in the market. In May 2002, the Commission approved code sharing by JAL on Qantas services on the Melbourne-Tokyo route which commenced in July 2002.

5.2 Qantas stated that operating conditions on the Australia-Japan route have deteriorated since the decisions of April and May 2002:

- in the six months following September 11, visitor arrivals fell by 18%, prior to this arrivals had been climbing gradually;
- confident of a medium term recovery Qantas continued with its expansion plans which resulted in a 14% increase in seats by July 2002 compared with July 2001;
- in October 2002, Qantas' subsidiary Australian Airlines commenced daily flights to Nagoya and Osaka, replacing the Qantas services on those routes;
- in November 2002, Australian Airlines introduced 3 weekly services to Fukuoka, lifting the total Australia-Japan capacity above level prior to September 11 and the Ansett collapse;
- in early 2003, market growth began to weaken as a result of a reluctance to travel by Japanese in anticipation of a conflict in Iraq;
- this was followed by the SARS pandemic which resulted in demand for Qantas' Tokyo services falling by 60% in the April to June 2003 period. In response Qantas reduced planned capacity to Tokyo by 40% during the Northern Summer scheduling period;
- Qantas restored its full Japan schedule for the Northern Winter 2003 scheduling period, however demand is yet to return to 2002 levels. Qantas submitted that current forward bookings are down on 2003 levels; and
- in summarising the capacity situation in March 2004 Qantas stated that almost 22,000 direct seats per week are being offered by airlines on the

Japan route, with an average 13,800 passengers travelling each way each week. Qantas added that at the time of the authorisation in 2002, just over 19,000 seats were being operated, with 14,400 passengers each way each week. (According to the Department of Transport and Regional Services published schedules there are currently 22,900 seats being operated).

5.3 Qantas submitted that as a result of the decline in traffic, increase in capacity and a decline in the Japanese yen relative to the Australian dollar, yields have declined on the Brisbane, Cairns and Melbourne services. As a result, Qantas has incurred losses on its Brisbane, Cairns and Melbourne services over the twelve months to December 2003. While Qantas' commercial performance has improved in recent months it concluded that it is likely to be some time before the route is back on a sustained financial footing.

5.4 Qantas planned to progressively replace B767-300 aircraft with Airbus A330-300 aircraft resulting in a 30 per cent increase in capacity per flight. Qantas submitted that the code share arrangements will be instrumental in its ability to sell the additional seats.

5.5 While Qantas and JAL are exchanging 1,337 seats per week Qantas would like to retain the ability to exchange up to 1,500 seats per week on Cairns and Brisbane services as currently authorised. On the Melbourne service JAL has indicated to Qantas that it is unlikely to require more than the 371 seats that it uses at present.

5.6 Qantas submitted that the code share arrangements have enabled the carriers to improve the level of capacity and product on the route over the last two years in very difficult circumstances. Qantas claimed the carriers have delivered a range of benefits including:

- the continuation of dedicated non-stop capacity from Tokyo to both Brisbane and Cairns, delivering significant tourism benefits for Queensland;
- a 10% increase in Qantas' capacity to Cairns;
- enhanced frequency and schedule choice between Tokyo and Queensland, benefiting business travellers and exporters;
- the introduction of daily B767-300 services to Melbourne, benefiting tourism, business travellers and exporters;
- a higher level of growth in passengers between Tokyo and each of Melbourne, Brisbane and Cairns than the average between Tokyo and all Australian cities;
- the promotion of Cairns and Melbourne by JAL, using its well developed distribution networks in the Japanese markets and a twofold promotion effort on marketing Brisbane, Cairns and Melbourne;
- protection of valuable slots at Narita; and
- continuing competition between Qantas and JAL due to the nature of the code share (majority blocked space arrangement).

## **Qantas – further submission**

5.7 The Commission wrote to Qantas seeking clarification of the capacity and frequency of service to be used on the Cairns route. The current determination, [2002] IASC 108, requires Qantas to operate double daily B767-300 services on the route.

5.8 Qantas, in its application, indicated that it would like the condition changed to a daily B747 service.

5.9 Qantas responded that it planned to introduce A330 aircraft on the route and sought flexibility in the type of aircraft used on the route. In addition, when the extension to the second runway are complete, Qantas may wish to operate a combination of aircraft types between Tokyo and Cairns.

5.10 Qantas suggested that if the proposed amendment caused concern for the Commission, the Commission might like to consider stipulation of a minimum number of 3,200 weekly seats to be operated. Qantas added that its B747-300 aircraft used on the Japan route would be reconfigured to 450 seats by the end of 2005 and there would be little difference in capacity terms between a double daily B767-300 and a daily B747-300 service.

## **Australian Tourist Commission**

5.11 The ATC submitted that the Qantas provision of code share seats to JAL for services from Tokyo to Cairns and Melbourne provided an important mechanism for engaging JAL and the influence they have in favour of Australian outbound travel with the Japanese distribution system and with the Japanese travelling public.

5.12 Further, the ATC submitted that without the code share the overall viability of Qantas' services from Japan would suffer and they would expect Qantas frequencies to be reduced. The ATC expected that an end of JAL code sharing on Qantas would prompt JAL to review total services to Australia with a risk of reduction in JAL operated frequencies.

5.13 In coming to these views the ATC considered:

- in 2003, total Japanese outbound departures to all destinations declined by 19.5 per cent while departures to Australia declined by 12.3 per cent;
- Japan remains a major source of tourism revenue despite a reduction of 20% in 2003, down from \$2.6 billion to \$2.1 billion;
- in 2003, Japan was again Australia's inbound market most dominated by package tourists in terms of arrivals and expenditure. The Bureau of Tourism Research recorded that 78 per cent of Japanese visitors reported that they purchased either accommodation or tours or another element of Australian ground content with their international airfare, the next highest was Korea with 54 per cent;
- every major wholesaler in Japan is JAL aligned – with literally the only exceptions being wholesalers owned by other airlines, for example Qantas Holidays. At the same time all wholesalers sell both Qantas and JAL seats;

- the Tokyo office of the ATC noted the influence JAL has with all players in the distribution system, the media and the travelling public. JAL's value to Australia is the huge endorsement it gives to Australia and all ports served from Japan. The ATC Co-operative campaigns with JAL have recently been their largest on a global basis with any partner – including Qantas;
- data for February 2004 indicates that the total outbound market contracted by 4.8% compare to February 2003 (despite the extra day this year). In contrast, Australia has posted increases for the last three months and has grown market share for each of the last twelve months;
- the ATC noted the dominant position of JAL, Qantas and Australian Airlines in the Japanese origin destination market, the potential barrier to entry and the potential for anti-competitive impacts of the code share arrangements on airline services on the route. The ATC also reported that discussions with ANA indicated that ANA was concentrating its efforts on the China market. It also concluded that the US carriers were unlikely to re-enter the market in the short to medium term.

### **Cairns Port Authority**

5.14 The Cairns Port Authority (CPA) supported Qantas' application for JAL to continue to code share on its services. The CPA noted that the code share arrangements lessened the cost of operations for both Qantas and JAL and it noted JAL's apparent unwillingness to provide direct services. In the CPA's view there were no competitive issues involving the granting of an extension of the existing code share arrangements.

5.15 The CPA submitted that continuation of the code share is critical to the success of the service as JAL is the main distributor of tickets on the route even though Qantas is the operator of the services. The CPA noted that several carriers which no longer operate to Cairns had all cited the low yielding nature of the traffic as the reason for their withdrawal of services. The CPA reported that JAL has indicated that it would be unlikely to re-enter the market in its own right if the code share arrangements with Qantas were not renewed. Additionally, ANA had indicated that it considered the reintroduction of services not economically viable at this stage.

5.16 The CPA stated that code share arrangements are a method by which carriers can share the cost of operations and reduce the business risk of operations into a low yielding destinations such as Cairns. Failure to renew the code share would have significant and damaging consequences to economy of Tropical North Queensland.

### **Queensland Government – Aviation Steering Committee**

5.17 The Queensland Government supported the continuation of the code share arrangements on the Cairns-Tokyo route. It noted the scope and importance of Japanese tourism to Cairns and Tropical North Queensland. It submitted that any decision that prevented the continuation of the code share could potentially place the commercial viability of the existing Tokyo-Cairns services in doubt and adversely affect Queensland's and Tropical North Queensland's tourism and economic development objectives.

5.18 In the view of the Queensland Government, growth in market and capacity has been possible principally because of the existing code share arrangement between Qantas and JAL. The Queensland Government reported that JAL had indicated in informal discussions that if the code share was not extended that they would be unlikely to operate to Cairns in their own right due to the difficulties in sustaining a commercially viable operation. This would in turn place the Qantas Tokyo-Cairns services in jeopardy and may impact on how Japan Airlines and Qantas serve the Brisbane and South East Queensland markets.

5.19 The Queensland Government noted that there appeared to be no other airline likely to operate alternative services in the next two years. Commenting on the condition that Qantas maintain a double daily B767-300 service between Tokyo and Cairns, Queensland suggested that Qantas at least ensure that there is no nett seat capacity reduction per day if frequencies were to change. Queensland was also of the view that the code share should be renewed for two years, after which a further review should be conducted.

### **Advance Cairns**

5.20 Advance Cairns, the peak economic development organization for Tropical North Queensland, supported the extension of the current code share arrangements. Advance Cairns submitted that Cairns and its surrounding regions are economically dependant on the tourism industry. Currently 14.4 per cent of the region's Gross Regional Product is directly attributable to tourism with international tourism contributing 40 per cent. Japanese visitors make up some 30 per cent of all international arrivals in Cairns.

5.21 Advance Cairns submitted that the Qantas /JAL code share is a significant contributor to the reliability of the Japanese market into Cairns and without it there was the real potential for a decline in capacity into Cairns from Tokyo.

### **Australian Competition and Consumer Commission (ACCC)**

5.22 The ACCC noted that code sharing by Qantas on JAL services was not subject to Commission consideration and informed the Commission that such arrangements would still be subject to the restrictive trade practices provisions of Part IV of the *Trade Practices Act 1974*.

5.23 The ACCC reaffirmed the views expressed in March 2002, when submitting on the previous Qantas/JAL code share, that arrangements between the two airlines will continue to raise competition concerns for as long as there is no competition from any other airline providing direct services between Australia and Japan.

5.24 The ACCC submitted that the code share arrangement was likely to impact negatively on fare and destination competition on the route. The ACCC submitted that the arrangement impacted on fare levels on both code share and non code share routes and supplied some air fare data to support its proposition.

5.25 The ACCC acknowledged the fall off in Japanese passenger demand over the past twelve months but noted that Qantas has maintained capacity levels and was planning to increase capacity with the introduction of new aircraft. The ACCC concluded that Qantas would not incur such losses on a continuing basis through operating over capacity unless there was a prospect of market recovery in sight. In

summarizing the ACCC stated that there were significant anti-competitive detriments arising from the code share arrangement which need to be offset by substantial benefits if it was to be approved by the Commission.

### **Tourism Tropical North Queensland (TTNQ)**

5.26 The TTNQ as the peak tourism body for the tropical north Queensland regions stated that it strongly supported the extension of the code share agreement for the following reasons:

- tourism is the region's mainstay industry, injecting over \$2 billion annually into the economy;
- a large percentage of the \$2 billion is reliant on the region's single most important market, Japan;
- tropical north Queensland is a remote region which is heavily reliant on airline services to support its mainstay industry tourism, and in particular, international services to/from Japan;
- the Japanese market has proven to be the region's most resilient international market and discontinuation of the code share would have a critical impact on services to tropical north Queensland and as a result on the economy of the region;
- there is no indication that JAL or ANA would plan to introduce new services on the Cairns route if the code share discontinued;
- the distribution and marketing clout which JAL can deliver would be diminished if the code share discontinued; and
- despite the fall in Japanese visitors to Australia in 2003, tropical north Queensland experienced an increase of 1.9 per cent in Japanese visitation according to the Bureau of Tourism Research's International Visitor Survey.

### **Tourism Victoria**

5.27 The Victorian Government fully supported, for the reasons set out in its last submission, Qantas' application to continue the code share arrangements.

### **Daikyo Group**

5.28 Daikyo, a Japanese company, which owns and operates a number of tourism operations in Cairns, supported an extension of the code sharing arrangements.

5.29 Daikyo's operations are focussed on the Japanese and international visitor markets. Daikyo submitted that, due to its close relationship with Japan, it was aware of the importance of the continuation of the code sharing agreement as Japanese people rely on the Japan Airlines brand for their travel. Daikyo believed that without the code share arrangement the number of Japanese visitors to Cairns was certain to decline.

## 6 Commission's consideration

6.1 In April 2002, when the Commission last considered code sharing on the Tokyo-Cairns and Tokyo-Brisbane routes (Determination [2002] IASC 108), the Commission concluded that:

- the evidence for the duration of the code share to that time suggested that fare levels had not risen and that traffic levels continued to rise. However, it was unclear whether these results have been achieved despite the code share as much as because of it;
- the Commission was unable to assess the impact on the route of the loss of Ansett International and All Nippon from the Japan market and the affects of the events of September 11. The Commission expected that in the absence of Ansett International and All Nippon, there would be a reduced marketing effort, less downward pressure on air fares, reduced choice of product and travel time options. The Commission was concerned that there would be less incentive for Qantas and Japan Airlines to offer competitive air fares to consumers on the route and to market the route as aggressively as they may otherwise have done; and
- the evidence was that, without code share approval, services to Queensland, particularly Cairns, may have been reduced and that this would be likely to lead to a reduced level of public benefits compared with allowing the code share to continue. The Commission was conscious of the fact that Qantas was making use of new slots at Narita runway B with the introduction of its double daily B767-300 services. Ensuring the retention of these slots for Australia was important from a long term tourism viewpoint

6.2 Taking these factors into account, the Commission considered at that time, that it should continue to authorise a continuation of the code share arrangement for a further two years. The Commission wished to review the situation further once the effects of September 11 could be seen in a longer term context, and the impact of the withdrawal of Ansett International and All Nippon was clearer.

6.3 Two years on, the situation is still unclear due to the effects of the Iraq war and to a greater extent the effects of the SARS pandemic on Japanese outbound travel.

6.4 Overall, travel between Japan and Australia has declined, with a significant fall in visitors being offset in part by an increase in Australian resident travel. Capacity provided by the direct carriers between Australia and Japan has increased from 21,250 weekly seats in April 2002 to 22,919 weekly seats currently.

6.5 Confidential data reported by Qantas on yields on the Cairns-Tokyo, Brisbane-Tokyo and Melbourne-Tokyo routes indicates that overall yields have continued to decline.

6.6 Qantas, the ATC and the Queensland Government have quoted forecasts in their submissions:

- Qantas quoted the Tourism Forecasting Council's (TFC) forecast for visitor arrivals from Japan to grow by 0.8 per cent in 2004 on 2003 arrivals, which

were down by 10.5 per cent. Qantas added that arrivals are not forecast to surpass 2002 levels until 2006;

- the ATC stated that recent discussions with the TFC indicated that new forecasts, due next month, will report that Japanese arrivals will grow strongly in 2004, but not quite sufficient to restore 2002 levels (growth of less than 14 per cent); and
- the Queensland Government included forecasts for Cairns and North Queensland from EMDA modelling indicating that visitor traffic would grow at an annual rate of 4.5%.

6.7 Qantas, submitted that current forward bookings are down on 2003 levels.

6.8 Clearly, the inbound traffic level for the next year or so remains uncertain but inbound traffic is unlikely to return to 2002 levels until possibly 2005 at the earliest. This combined with the general increase in capacity on the route and the prospect, at least in the short term, of increased capacity on the Cairns route and an increase in capacity on the Melbourne route will lead to a continued downward pressure on yields. Additional downward pressure on yields comes from the many destinations competing in the Japanese outbound market.

6.9 Against the backdrop of the weak Japanese travel market over the past year of more, it is likely that the code share arrangement has worked to the public benefit by assisting in the maintenance of service levels to both Cairns and Melbourne. Without the arrangement, there may possibly have been a withdrawal of some services.

6.10 Advice from a number of submitters suggests that, if the Commission were not to continue its approval of the code share arrangements, then there is a strong likelihood that JAL would not introduce services to Cairns or Melbourne. The Commission accepts this is likely to be the case, particularly given the fairly weak growth outlook for the Japan route. Cairns and Melbourne would be left with Qantas services alone without the support of JAL's distribution network in Japan, the source of 90% of the traffic on the route. This may in turn jeopardise the viability of Qantas' services. This would clearly not be to the benefit of the travelling public. Further, the loss of services could be expected to lead to a significant loss of tourism to Cairns and the surrounding North Queensland region and possibly also Melbourne.

6.11 The Commission concludes that the overall situation is not greatly changed from the situation that prevailed when the Commission last reviewed the code share arrangements in April 2002. The Commission considers that there is no lessening of public benefit from allowing Qantas to continue to use the relevant capacity in code share services with Japan Airlines. As a result the Commission will authorize the code share for an additional period.

6.12 Qantas, has requested that the code share be authorized for the period of each of the determinations. The determinations in question allocate the following capacity and expire on the following dates:

- [2001] IASC 104 allocates 1.2 B767-200 units of capacity and expires on 28 May 2006;

- [2001] IASC 116 allocates 2.4 B767-200 units of capacity and expires on 6 November 2006;
- [2002] IASC 104 allocates 4.4 B767-200 units of capacity and expires on 13 February 2007; and
- [2002] IASC 108 allocates 45.6 B767-200 units of capacity and expires on 22 April 2007

6.13 The Commission is not attracted to granting the lengthy extension sought by Qantas. The Commission will approve joint services arrangements for shorter periods when there is market uncertainty in order to maximise the opportunity for competitive outcomes. This does not preclude further approvals in the event that stronger market conditions do not eventuate.

6.14 The Commission retains its concern about the underlying potential for anti-competitive impacts from the code share. If the market continues to recover, and does so more strongly than anticipated, then scope may appear for the code share partners to exploit a lack of competitive tension between them, particularly if the absence of other airlines in the market continues.

6.15 Accordingly, the Commission will authorise an extension to the code share arrangements for a further two years until 30 June 2006.

6.16 The Commission will accept suggestions by the Queensland Government and Qantas for a revised condition requiring a minimum number of seats to be operated on the Cairns-Tokyo route rather than a minimum frequency requirement. This conclusion accepts the need to provide Qantas with the flexibility to introduce new aircraft on the route, while preserving a level of service to Cairns which protects the tourism interests of the region.

## **7 Decision ([2004] IASC 202)**

7.1 In accordance with section 24 of the Act, the Commission varies Determinations [2001] IASC 107, [2001] IASC 116, [2002] IASC 104 and [2002] IASC 108, as requested by Qantas, by:

7.2 *deleting* “Qantas may use the capacity to provide services jointly with Japan Airlines until end June 2004 in accordance with:”

7.3 *adding* “Qantas may use the capacity to provide services jointly with Japan Airlines until end June 2006 in accordance with:”

7.4 for Determination [2002] IASC 108, alone, *deleting* the following condition:

- “the approval to operate joint services with Japan Airlines will be effective only while Qantas maintains at least double daily B767-300 services between Cairns and Tokyo. The Commission will allow Qantas some flexibility in respect of this requirement to account for short term operational or commercial factors which may arise from time to time;”

and *adding*:

- “the approval to operate joint services with Japan Airlines will be effective only while Qantas operates a minimum of 3,200 seats per week between Cairns and Tokyo. The Commission will allow Qantas some flexibility in respect of this requirement to account for short term operational or commercial factors which may arise from time to time;”

Dated: 27 April 2004

John Martin  
Chairman

Michael Lawriwsky  
Member

Stephen Lonergan  
Member