



Australian Government

International Air Services Commission

DECISION

Decision: [2004] IASC 205
Variation of: [2004] IASC 109
The Route: New Zealand
The Applicant: Norfolk Jet Express Pty Ltd
(Incorporated on Norfolk Island,
Registration Number 8/97) (Norfolk Jet)
Public Register: IASC/APP/200418

1 The application

1.1 On 17 August 2004, Norfolk Jet applied for a variation to Determination [2004] IASC 109 to permit Qantas Airways Limited (Qantas) to code share on its services between Norfolk Island and Auckland.

1.2 On 17 June 2004, the Commission allocated Norfolk Jet unlimited capacity to operate between points in Australia and points in New Zealand.

1.3 Norfolk Jet proposes to extend its current domestic code share operations between Sydney, Melbourne and Brisbane and Norfolk Island with Qantas to its new international operations between Norfolk Island and Auckland.

1.4 The Commission published a notice on 20 August 2004 inviting submissions about the application. No submissions were received.

1.5 All material supplied by the applicant is filed on the Commission's Register of Public Documents. Commercial in confidence material supplied by the applicant is filed on the Commission's Confidential Register.

2 Provisions of the relevant air services arrangements

2.1 Under the arrangements with New Zealand, designation of multiple airlines is permitted and there is unlimited capacity available to Australian carriers which may be used between any points in Australia and any points in New Zealand.

2.2 Furthermore, the airlines of Australia and New Zealand may enter into code share, blocked space or other cooperative marketing arrangements with any other airline, including the airlines of other countries, as marketing and/or operating airline,

provided only that the airlines have the necessary authorities to conduct air transport on the routes or segments concerned.

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 Norfolk Jet application.

3.2 Under paragraph 6.3 of the Minister's Policy Statement (No.5), of 19 May 2004, the delegate 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 application is of benefit to the public. For an established domestic carrier which has commenced international operations such as Norfolk Jet, this means that there is public benefit arising from the use of capacity.

3.3 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 the capacity in joint services with another carrier. The delegate will authorise the use of capacity in joint services in accordance with the code share agreement between Qantas and Norfolk Jet of 25 August 1999, as amended by agreement of 31 August 2004.

3.4 The delegate will vary the determination as requested.

4 Decision ([2004] IASC 205)

4.1 In accordance with section 24 of the Act, the Commission varies Determinations [2004] IASC 109, as requested by Norfolk Jet, by adding the following conditions:

- the capacity may be used by Norfolk Jet to provide services jointly with Qantas in accordance with:
 - the code share agreement between Norfolk Jet and Qantas dated 25 August 1999 as amended by the amendment agreement of 31 August 2004;
 - or any subsequent code share agreement between Norfolk Jet and Qantas for operations on the Australia-New Zealand route, whether or not it replaces the existing agreement, with the prior approval of the Commission; and
- under any code share agreement with Qantas:

- Norfolk Jet must price and sell its services on the route independently of Qantas;
- Norfolk Jet must not share or pool revenues on the route with Qantas;
- to the extent that the capacity is used to provide joint services on the route, Norfolk Jet must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;.

Dated: 3 September 2004

Michael Bird
Executive Director
Delegate of the IASC Commissioners