



Australian Government

International Air Services Commission

DECISION

Decision: [2005] IASC 206
Variation of: [2001] IASC 121
The Route: New Zealand
The Applicant: Qantas Airways Limited
(ACN 009 661 901) (Qantas)
Public Register: IASC/APP/200510

1 The application

1.1 On 3 August 2005, Qantas applied to the Commission for a variation to Determination [2001] IASC 121 (the Determination) to permit Jetstar, a wholly-owned subsidiary of Qantas, to operate services on the New Zealand route. The Determination allocates unlimited passenger and freight capacity to Qantas on the route and the conditions of the Determination currently permit operations by Qantas alone. Qantas has also sought permission for Jetstar to code share on Qantas services and vice versa.

1.2 The Determination currently permits British Airways, Lan Chile, Aerolineas Argentinas, American Airlines, Polynesian Airlines and Air Tahiti Nui to code share on Qantas operated services on the Tasman. Qantas is not seeking to extend these code share arrangements to Jetstar operated services.

1.3 Jetstar plans to commence operations between Christchurch and Sydney, Melbourne, Brisbane and Coolangatta effective from 1 December 2005.

1.4 The Commission published a notice on 9 August 2005 inviting submissions about the application. No submissions were received. All public material supplied by the applicant is filed on the Register of Public Documents.

2 Commission's consideration

2.1 The Act allows for capacity to be used by a wholly owned subsidiary of another Australian carrier. Section 15(2)(ea) states that determinations may include a condition that, to the extent that any of the capacity is allocated to a particular Australian carrier, it may be used in whole or in part by any one or more of the following:

- (i) the carrier;
- (ii) a wholly-owned subsidiary of the carrier; and,
- (iii) if the carrier is a wholly-owned subsidiary of another Australian carrier - that other carrier.

2.2 Section 15(2A) states that if a determination includes a condition of a kind mentioned in paragraph 15(2)(ea), the determination may include conditions that are applicable to all, or some only, of the persons who are permitted to use the capacity concerned.

2.3 When considering applications to vary determinations, the Commission must decide whether the determinations, as varied, would be of benefit to the public. Under section 6.3 of the Minister's policy statement, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity and no submission is received about the application, only the criteria in paragraph 4 of the policy statement are applicable. Under paragraph 4, the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public. Jetstar is already operating a range of domestic services and in the Commission's view is reasonably capable of obtaining the necessary approvals to operate on the New Zealand route and of implementing its proposals. This means that there is public benefit arising from the use of the entitlements.

2.4 Under 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. Qantas is proposing to code share on Jetstar operated services and vice versa.

2.5 The Commission has previously considered the issue of code sharing between parent and subsidiary companies (see Decisions [2003] IASC 205 and [2003] IASC 207 in relation to operations by Australian Airlines, another Qantas subsidiary, on the Malaysia and Indonesia routes). In the Commission's view Qantas and Australian Airlines operated in different markets which best matched their product and cost structures and would be unlikely to compete on price even if both carriers operated on the same route. The Commission concluded that there can generally be expected to be no lessening of public benefit from authorising the parent airline code sharing on the subsidiary airline and vice versa. The Commission considers that the same conclusion is applicable in relation to the current application and will vary the Determination as requested by Qantas.

3 Decision ([2005] IASC 206)

3.1 In accordance with section 24 of the Act, the Commission varies Determination [2001] IASC 121, which allocates capacity on the New Zealand route, as requested by Qantas, by:

removing the following conditions from [2001] IASC 121:

- only Qantas is permitted to utilise the capacity;
- 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;

adding the following conditions to [2001] IASC 121:

- only Qantas or another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity;
- neither Qantas nor another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- the capacity may be used by Jetstar to provide joint services with Qantas and vice versa between Australia and New Zealand;
- to the extent that the capacity is used to provide joint services on the route, Qantas and Jetstar must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;

Dated: 22 August 2005

John Martin
Chairman

Michael Lawriwsky
Member

Vanessa Fanning
Member