



## Australian Government

### International Air Services Commission

#### DECISION

**Decision:** [2006] IASC 208  
**Variation of:** [2001] IASC 125  
**The Route:** United States  
**The Applicant:** Qantas Airways Limited  
(ACN 009 661 901) (Qantas)  
**Public Register:** IASC/APP/200602

#### 1 The application

1.1 On 12 April 2006, Qantas applied to the Commission for a variation to Determination [2001] IASC 125 (the Determination) to permit Jetstar, a wholly-owned subsidiary of Qantas, to operate services on the United States route. The Determination allocates unlimited passenger capacity to Qantas on the route and the conditions of the Determination currently permit operations by Qantas alone. Jetstar plans to operate three services per week between Sydney and Honolulu and a further two services per week between Melbourne and Honolulu. The services are proposed to commence in December 2006 and to be operated using A330-200 aircraft with 303 seats in a two-class configuration. Qantas also sought authorisation for Qantas to code share on Jetstar's services and vice versa.

1.2 The Determination currently permits a number of third-country airlines to code share on Qantas operated services. Qantas is not seeking to extend these third-country airline code share arrangements to Jetstar operated services.

1.3 The Commission published a notice on 19 April 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 *International Air Services Commission Act 1992* (the Act) allows for allocated capacity to be used by a wholly owned subsidiary of another Australian carrier. Section 15(2)(ea) of the Act 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 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 an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. The Commission has previously allocated capacity to Qantas to be used by Jetstar, a wholly-owned subsidiary of Qantas, on the New Zealand route (Decision [2005] IASC 2006). Jetstar is now an established international carrier, having operated services on the New Zealand route since December 2005. This means that there is public benefit arising from the use of the entitlements on the United States route.

2.3 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.

2.4 The Commission has considered the issue of code sharing between Qantas and wholly-owned subsidiary companies on several occasions in relation to operations by Australian Airlines, another Qantas subsidiary, including on the Indonesia route - see Decision [2003] IASC 207. Similar decisions were made in respect of applications for code sharing on the Malaysia and New Zealand routes ([2003] IASC 205, and [2005] IASC 2006 respectively).

2.5 The Commission's position in those cases was that Qantas and Australian Airlines operated in different markets which best matched their product and cost structures and they would be unlikely to compete on price even where 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 with the subsidiary airline. The Commission considers that the same conclusion is applicable in relation to code sharing between Qantas and Jetstar and will authorise code sharing between Qantas and its wholly-owned subsidiaries.

### **3 Decision ([2006] IASC 208)**

3.1 In accordance with section 24 of the Act, the Commission varies Determination [2001] IASC 125, which allocates capacity on the United States route, as requested by Qantas, by:

*removing* the following conditions from [2001] IASC 125:

- 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 125:

- 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 any wholly-owned subsidiary of Qantas to provide joint services with Qantas;
- to the extent that the capacity is used to provide joint services on the route, Qantas and any wholly-owned subsidiary of Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;

Dated: 8 May 2006

John Martin  
Chairman

Vanessa Fanning  
Member

Michael Lawriwsky  
Member