



## Australian Government

### International Air Services Commission

#### DECISION

<b>Decision:</b>	<b>[2006] IASC 216</b>
<b>Variation of:</b>	<b>[2002] IASC 107</b>
<b>The Route:</b>	<b>Switzerland</b>
<b>The Applicant</b>	<b>Qantas Airways Limited (ACN 009 661 901) (Qantas)</b>
<b>Public Register File:</b>	<b>IASC/APP/200609</b>

#### 1 The application

1.1 On 19 May 2006, Qantas applied for a variation to Determination [2002] IASC 107 (the Determination) to permit Qantas to code share on daily Finnair services between Zurich and Helsinki and vice versa. The authorisation is proposed to replace the existing authority under the Determination enabling Qantas to code share with British Airways between London and Geneva. Qantas already code shares with Finnair on that airline's services between Helsinki and Bangkok and between Bangkok and Singapore. Finnair also code shares on a number Qantas services to Australia.

1.2 The code share agreement between Qantas and Finnair is a free sale agreement for passenger traffic only. A signed copy of the Amendment Annex to the existing Qantas - Finnair code share agreement is to be submitted to the Commission shortly.

1.3 The Commission published a notice on 28 April 2006 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 Provisions of the relevant air services arrangements

2.1 The Australia – Switzerland air services arrangements include a liberal policy, based on market demand, for the approval of free sale code share arrangements with third country carriers.

#### 3 Commission's assessment

3.1 When considering applications to vary determinations, the Commission must decide whether the determinations, as varied, would be of benefit to the public. Under paragraph 4 of the Minister's Policy Statement (No. 5), of 19 May 2004, the use of entitlements by Australian carriers under a bilateral arrangement 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.

3.2 Section 15(2)(e) of the Act requires the Commission to include a condition in determinations stating the extent to which the carrier may use allocated capacity in joint services with another carrier. The Commission has previously authorised the use of capacity in joint services between Qantas and Finnair and will do so in this case. The authorisation will be subject to the Amendment Annex to the existing code share agreement between the two carriers being submitted to the Commission, prior to the services commencing.

3.3 The Commission will vary the determination as requested by Qantas.

#### **4 Decision [2006] IASC 216**

4.1 In accordance with Section 24 of the Act, the Commission varies Determination [2002] IASC 107 by:

*removing* the following conditions from Determination [2002] IASC 107:

- 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

*adding* the following conditions to Determination [2002] IASC 107:

- the capacity may be used by Qantas to provide services jointly with Finnair in accordance with:
  - the code share agreement dated 1 March 2005 and the finalised Amendment Annex, signed by Qantas and Finnair, being approved by the Commission, with such additional conditions (if any) as the Commission may require, prior to the code share services commencing;
  - or any subsequent code share agreement between Qantas and Finnair for operations on the Australia – Switzerland route with the prior approval of the Commission;
- under any code share agreement with Finnair:

- Qantas must price and sell its services on the route independently of Finnair;
- Qantas must not share or pool revenues on the route with Finnair;
- 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.

Dated: 9 June 2006

John Martin  
Chairman

Vanessa Fanning  
Member

Michael Lawriwsky  
Member