



Australian Government

International Air Services Commission

DECISION

Decision:	[2006] IASC 217
Variation of:	[2002] IASC 104 & [2004] IASC 120
The Route:	Japan
The Applicant:	Qantas Airways Limited (Qantas) (ACN 009 661 901)
Public Register:	IASC/APP/200604

1 The application

1.1 On 4 May 2006, Qantas applied for a variation to Determination [2002] IASC 104 to permit the capacity to be used to hold out joint services with Qantas or any wholly-owned subsidiary of the Qantas group. Qantas also sought variation to Determination [2004] IASC 120 to permit the capacity to be used by a wholly-owned subsidiary of Qantas.

1.2 The Commission published a notice on 12 May 2006, inviting submissions about the application. No submissions were received. All material supplied by the applicant is filed on the Register of Public Documents.

2 Provisions of relevant air services arrangements

2.1 Under the Australia – Japan air services arrangements, the designated airlines of Australia may operate services between points in Australia to specified points in Japan, including Osaka.

3 Commission's consideration

3.1 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.

3.2 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 and more recently on a number of other routes including Japan [2006] IASC 209). 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 Japan route.

3.3 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.

3.4 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 and recently for Jetstar on the Japan and US routes amongst others, see [2006] IASC 209 and [2006] IASC 208).

3.5 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.

3.6 The Commission will also vary the determinations as requested by Qantas.

4 Decision [2006] IASC 217

4.1 In accordance with section 24 of the Act, the Commission varies Determinations [2002] IASC 104 and [2004] IASC 120, which allocate capacity on the Japan route, as requested by Qantas, by:

For Determination [2002] IASC 104

Which already includes a condition permitting use of the capacity by a wholly owned subsidiary.

removing the following conditions from [2002] IASC 104, as amended:

- “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 Australian Airlines to provide joint services with Qantas and vice versa for cargo sales only between Australia and Japan.”

adding the following conditions to [2002] IASC 104:

- “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;”

For Determination [2004] IASC 120

Which already includes a condition permitting a wholly-owned subsidiary of Qantas to provide joint services with Qantas.

adding the following condition to [2004] IASC 120:

- “only Qantas or another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity;”

Dated: 09 June 2006

John Martin
Chairman

Vanessa Fanning
Member

Michael Lawriwsky
Member