



Australian Government

International Air Services Commission

DECISION

Decision:	[2006] IASC 224
Variation of:	[2003] IASC 105, [2004] IASC 105, [2005] IASC 106, [2005] IASC 123, [2005] IASC 124 & [2005] IASC 126
The Route:	Japan
The Applicant:	Qantas Airways Limited (Qantas) (ACN 009 661 901)
Public Register:	IASC/APP/200621

1 The application

1.1 On 16 November 2006, Qantas applied for a variation to various Determinations (listed above) to permit the capacity to be used to hold out joint services with Qantas or any wholly-owned subsidiary of the Qantas group. The purpose of the variations is to enable Qantas to code share on new Jetstar services to western Japan. Jetstar will commence A330-200 services between Cairns and Nagoya in August 2007 and between Cairns and Osaka in September 2007. The relevant determinations already allow the capacity to be used by a wholly-owned subsidiary of Qantas.

1.2 Qantas also sought additional variations to Determinations [2005] IASC 123 and [2005] IASC 126. Removal of authorisation for code sharing between Qantas and Australian Airlines is sought, as is the current approval for Qantas and Japan Airlines to code share on the Melbourne – Tokyo sector. Another determination continues to authorise the Qantas/Japan Airlines code share and is sufficient for Qantas' requirements. Qantas also sought an extra minor variation to Determination [2003] IASC 105 to increase the capacity allocated by 0.1 B767-200 units to a total of 6.1 B767-200 units of capacity.

1.3 The Commission published a notice on 24 November 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. Code sharing between designated airlines of the same country is permitted.

3 Commission's consideration

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 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.

3.2 In relation to the additional capacity sought by Qantas, this is a minor amount. The Explanatory Memorandum to the Minister's policy statement provides guidance to the Commission in relation to requests to vary determinations to add minor amounts of capacity. A minor increase in capacity would not generally exceed one B747 equivalent per week. In this case, the 0.1 B67-200 equivalent units sought by Qantas is well below this amount. Accordingly, the Commission will vary the determination as sought by Qantas.

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. The Commission has considered the issue of code sharing between Qantas and wholly-owned subsidiary companies on several occasions, including in relation to operations by Jetstar on the Japan route.

3.4 The Commission's position in those cases was that Qantas and Jetstar (and previously 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's view continues to be 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 will vary the determinations as requested by Qantas.

3.5 The Commission will also remove existing code share approvals from Determinations [2005] IASC 123 and [2005] IASC 126, as requested by Qantas.

4 Decision [2006] IASC 224

4.1 In accordance with section 24 of the Act, the Commission varies Determinations [2003] IASC 105, [2004] IASC 105, [2005] IASC 106, [2005] IASC 123, [2005] IASC 124 & [2005] IASC 126, as requested by Qantas, by:

For Determinations [2004] IASC 105, [2005] IASC 106 and [2005] IASC 124

Adding the following conditions to [2004] IASC 105, [2005] IASC 106, and [2005] IASC 124:

- “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 [2003] IASC 105

In paragraph 3.1 of [2003] IASC 105, *replacing* “allocating six B767-200 units of capacity” with “allocating 6.1 B767-200 units of capacity”

and

adding the following conditions to [2003] IASC 105:

- “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 Determinations [2005] IASC 123 and [2005] IASC 126

adding the following conditions to [2005] IASC 123 and [2005] IASC 126:

- “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;”

removing the following conditions from [2005] IASC 123 and [2005] IASC 126, as amended:

- “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.
- Qantas may use the capacity to provide services jointly with Japan Airlines until end June 2008 in accordance with:

- the codeshare agreement, signed by Qantas and Japan Airlines, being approved by the Commission, with such additional conditions (if any) as the Commission may require, prior to code share services commencing, or as varied except in relation to:
 - the number of seats to be purchased exceeding 371 per week in each direction; or
 - Melbourne – Tokyo being the city pair served; or
 - any financial adjustment;
- variations to the codeshare agreement which relate to any of the excepted matters referred to above, subject to the prior approval of the Commission; or
- any subsequent code share agreement between Qantas and Japan Airlines for operations on the Australia - Japan route, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the code share agreement with Japan Airlines:
 - Qantas must price and sell its services on the route independently of Japan Airlines;
 - Qantas must not share or pool revenues under any such agreement; and
 - Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking
- Qantas must submit to the Commission reports each quarter on the number of code share seats sold by Japan Airlines on Qantas’ operated services between Melbourne and Tokyo, for both the hard and soft block seats; and its yields per revenue passenger kilometre for all passenger classes on these services”.

Dated: 4 December 2006

John Martin
Chairman

Vanessa Fanning
Member

Michael Lawriwsky
Member