



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2008] IASC 103
The Route: United States
The Applicant: Qantas Airways Limited (Qantas)
(ACN 009 661 901)
Public Register: IASC/APP/200804

1 The application

1.1 On 21 February 2008, Qantas applied for an allocation of unlimited passenger and cargo capacity and frequency on the United States route. The application follows the recent conclusion of revised air services arrangements between Australia and the United States, which removed restrictions on capacity, frequency and routes. Concurrently with this application Qantas sought revocation of its existing determinations on the United States route – see Decision [2008] IASC 203.

1.2 Qantas asked that the new determination be made for a period of ten years. Qantas also applied for retention of the authorisations in its current determinations which permit code sharing with a number of airlines. Qantas advised that it no longer has commercial arrangements in place with two of these airlines, namely Federal Express and United Parcel Service but did not seek removal of the authorisation for these arrangements. The Commission understands from discussion with Qantas that these arrangements might be reactivated in future and Qantas wishes to retain the authorisations in the new determination. In late March 2008, Qantas advised the Commission of corrections to its application concerning some dates of its authorised code share arrangements.

1.3 On 27 February 2008, the Commission published a notice inviting other applications for an allocation of the capacity sought by Qantas. No applications were received.

1.4 All public material supplied by the applicant is filed on the Commission's Register of Public Documents.

2 Provisions of relevant air services arrangements

2.1 The air services arrangements between Australia and the United States permit the designation of multiple Australian airlines. According to the Register of Available Capacity, there is unlimited capacity for designated Australian carriers to operate scheduled passenger and cargo services between Australia and the United States. Australian airlines may enter into co-operative marketing arrangements with airlines of either Party or airlines of a third country.

3 Delegate's consideration

3.1 In accordance with section 27AB of the Act and regulation 3A of the *International Air Services Commission Amendment Regulations 2003 (No.1)*, the delegate of the Commission considers the Qantas application.

3.2 Under paragraph 6.2 of the Minister's policy statement, the Commission is required only to apply the criteria in paragraph 4 of the policy statement. 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.

3.3 The delegate notes that this application involves only a technical change to the description of its entitlements under Determinations made previously by the Commission in favour of Qantas on the United States route. Qantas has operated passenger and freight capacity between Australia and the United States for a number of years under these earlier allocations. The delegate is satisfied that Qantas meets the paragraph 4 criteria. Accordingly, the delegate will allocate the capacity sought to Qantas. As sought by Qantas, the delegate will concurrently revoke Qantas' existing determinations allocating capacity on the United States route –see Decision [2008] IASC 203.

3.4 Qantas has sought the ability for its wholly owned subsidiaries to use the allocated capacity, in the interests of commercial and operational flexibility. The Commission has previously allocated capacity to Qantas to be used by wholly-owned subsidiaries of Qantas on this and a number of other routes. The delegate notes that a Qantas subsidiary, Jetstar currently utilises capacity on this route. The delegate will authorise the use of the capacity by Qantas' wholly-owned subsidiaries on the United States route.

3.5 Under paragraph 11.1(b) of the Minister's policy statement, where capacity and routes are unrestricted, Commission determinations are to be for a period of ten years.

3.6 Section 15(2) (e) of the Act specifies that 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. The Commission has previously authorised code sharing by Qantas with a number of carriers on this route and the delegate will authorise a continuation of those arrangements.

4 Determination allocating capacity on the United States route to Qantas ([2008] IASC 103)

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating unlimited passenger and cargo capacity on the United States route in accordance with the terms of the Australia – United States air transport arrangements.

4.2 The determination is for ten years from the date of the determination.

4.3 The determination is subject to the following conditions:

- Qantas is required to utilise the capacity;
- 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;
- 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; and
- 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;
- the capacity may be used by Qantas to provide passenger services jointly with American Airlines in accordance with:
 - the code share agreement dated 23 September 2004 and the Amendment Agreement dated 14 November 2007;
 - or any subsequent code share agreement between Qantas and American Airlines for operations on the Australia - United States route with the prior approval of the Commission; and
- under any passenger code share agreement with American Airlines:

- Qantas must price and sell its services on the route independently of American Airlines;
- Qantas must not share or pool revenues on the route with American Airlines;
- the capacity may be used by Qantas to provide services jointly with Air Pacific in accordance with:
 - the code share agreement dated 24 July 2006 between Qantas and Air Pacific;
 - or any subsequent code share agreement between Qantas and Air Pacific for operations on the Australia - United States route with the prior approval of the Commission; and
- under any code share agreement with Air Pacific:
 - Qantas must price and sell its services on the route independently of Air Pacific;
 - Qantas must not pool revenues on the route with Air Pacific;
- the capacity may be used by Qantas to provide services jointly with Air Tahiti Nui in accordance with:
 - the code share agreement dated 12 May 2000 and the Amendment Agreement of 23 October 2007;
 - or any subsequent code share agreement between Qantas and Air Tahiti Nui for operations on the Australia - United States route with the prior approval of the Commission; and
- under any code share agreement with Air Tahiti Nui:
 - Qantas must price and sell its services on the route independently of Air Tahiti Nui;
 - Qantas must not share or pool revenues on the route with Air Tahiti Nui;
- the capacity may be used by Qantas to provide services jointly with Mexicana Airlines in accordance with:
 - the code share agreement dated 8 July 2006, as amended;
 - or any subsequent code share agreement between Qantas and Mexicana Airlines for operations on the Australia - USA route with the prior approval of the Commission;

- under any code share agreement with Mexicana Airlines:
 - Qantas must price and sell its services on the route independently of Mexicana Airlines;
 - Qantas must not share or pool revenues on the route with Mexicana Airlines;
- the capacity may be used by Qantas to provide cargo services jointly with Federal Express in accordance with:
 - the code share agreement dated 6 August 1998, as amended;
 - or any subsequent code share agreement between Qantas and Federal Express for operations on the Australia - United States route with the prior approval of the Commission; and
- under any code share agreement with Federal Express:
 - Qantas must price and sell its services on the route independently of Federal Express;
 - Qantas must not share or pool revenues on the route with Federal Express;
- the capacity may be used by Qantas to provide cargo services jointly with United Parcel Service in accordance with:
 - the code share agreement dated 20 January 1998;
 - or any subsequent code share agreement between Qantas and United Parcel Service for operations on the Australia - United States route with the prior approval of the Commission; and
- under any code share agreement with United Parcel Service:
 - Qantas must price and sell its services on the route independently of United Parcel Service;
 - Qantas must not share or pool revenues on the route with United Parcel Service;
- 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;
- changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:

- results in the designation of the airline as an Australian carrier under the Australia - United States air transport arrangements being withdrawn; or
- has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of Qantas or be in a position to exercise effective control of Qantas, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of Qantas are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia - United States air transport arrangements.

Dated: 2 April 2008

Michael Bird
Executive Director
Delegate of the IASC Commissioners