



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2008] IASC 104
The Route: Argentina
The Applicant: Qantas Airways Limited (Qantas)
(ACN 009 661 901)
Public Register: IASC/APP/200805

1 The application

1.1 On 12 March 2008, Qantas applied for an allocation of capacity on the Argentina route. Qantas sought an allocation of 1,029 seats per week in each direction to enable it to operate three weekly return non-stop B747-400 services between Sydney and Buenos Aires. The aircraft would be operated in a three-class configuration. The services are planned to commence from 24 November 2008.

1.2 Qantas also sought approval for LAN Argentina to code share on Qantas' services. Qantas advised that it would provide a copy of the code share agreement with LAN Argentina to the Commission prior to services commencing.

1.3 The Commission published a notice on 19 March 2008 inviting other applications for all or any part of the capacity sought by Qantas. No application was 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 - Argentina air services arrangements, the designated airlines of Australia are entitled to operate 2,800 seats per week in each direction on the Argentina route and all of these seats are available for immediate allocation.

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 For an established international carrier such as Qantas, this means that there is public benefit arising from the use of the entitlements. Therefore, the delegate concludes that an allocation to Qantas of 1,029 seats per week in each direction on the Argentina route would be of benefit to the public.

3.4 Section 15(2) (d) 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. Qantas has stated that the capacity would be used in a code share arrangement with LAN Argentina. The code share arrangement involves hard-blocked space arrangements and should contribute to developing a greater level of competition on the route than exists at present. The delegate will authorise the use of the capacity in joint services with LAN Argentina on the Argentina route, subject to Qantas providing a copy of the code share agreement to the Commission for approval prior to services commencing.

3.5 Qantas has sought authority for its wholly-owned subsidiaries to use the capacity in the interests of commercial and operational flexibility, and for Qantas to be able to code share with its wholly-owned subsidiaries. The Commission has previously allocated capacity to Qantas to be used by its wholly-owned subsidiaries on this and a number of other routes. The delegate will authorise the use of the capacity by Qantas' wholly-owned subsidiaries on the Argentina route, including in joint services with Qantas.

4 Determination allocating capacity on the Argentina route to Qantas ([2008] IASC 104)

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating 1,029 seats per week in each direction on the Argentina route under the Australia - Argentina air services arrangements.

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

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 24 January 2009 or from such other date approved by the Commission;
- 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 Qantas to provide services jointly with any wholly-owned subsidiary of Qantas;

- the capacity may be used by Qantas to provide services jointly with LAN Argentina in accordance with:
 - the code share agreement between Qantas and LAN Argentina, provided the agreement is received and approved by the Commission prior to services commencing;
 - or any subsequent code share agreement between Qantas and LAN Argentina for operations on the Australia - Argentina route with the prior approval of the Commission; and
- under any code share agreement with LAN Argentina:
 - Qantas must price and sell its services on the route independently of LAN Argentina;
 - Qantas must not share or pool revenues on the route with LAN Argentina;
- 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, at the time of booking, of the carrier actually operating the flight;
- 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 - Argentina air services 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 – Argentina air services arrangements.

Dated: 7 April 2008

Michael Bird
 Executive Director
 Delegate of the IASC Commissioners