



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2008] IASC 109
The Route: South Africa
The Applicant: Qantas Airways Limited (Qantas)
(ACN 009 661 901)
Public Register: IASC/APP/200813

1 The application

1.1 On 26 June 2008, Qantas applied for an allocation of two frequencies per week of capacity on the South Africa route. Qantas plans to increase its frequency between Sydney and Johannesburg from the current five to seven services per week. The first extra service is proposed to be added from December 2008 and the second extra frequency from April 2009. The addition of these services is dependent on Qantas taking delivery of new A380 aircraft, which would release B747-400s from operations between Australia and the United States.

1.2 Qantas requested that the capacity be able to be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of the Qantas Group, and that the capacity may be used to provide joint services with Qantas or any wholly-owned subsidiary of the Qantas Group. The capacity would be fully utilised by 31 July 2009.

1.3 Qantas advised that it intended that South African Airways (SAA) would code share on the two new services. However, the airline said it would seek approval for this later, as part of a detailed application for an extension of the existing authorisation to code share with SAA which presently expires on 31 December 2008.

1.4 The Commission published a notice on 4 July 2008, inviting other applications for the capacity. No applications were received.

1.5 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 – South Africa air services arrangements, in operating services to or from Johannesburg, Capetown and/or Durban, the designated airlines of Australia may operate services with any type of aircraft. The Register of Available Capacity shows that there are five frequencies per week available for immediate allocation. Current allocations by the Commission on the route total five frequencies per week.

3 Commission's consideration

3.1 Qantas is the only applicant for capacity. Under paragraph 6.2 of the Minister's Policy Statement (No.5), of 19 May 2004, 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. Qantas is an established international carrier that is clearly capable of obtaining the necessary approvals and of implementing the proposed operations. This means that there is public benefit arising from Qantas using the entitlements on the South Africa route. The Commission will allocate the capacity sought by Qantas.

3.2 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.

3.3 The Commission has previously authorised wholly-owned subsidiaries of Qantas to use capacity allocated to Qantas and will do so in this case.

3.4 Section 15(2A) states that if a determination includes a condition of a kind mentioned in paragraph 15(2)(ea), the determination may include conditions that are applicable to all, or some only, of the persons who are permitted to use the capacity concerned. The conditions of the determination will apply to both Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas.

3.5 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 has sought flexibility to code share with wholly-owned subsidiaries at some stage in the future. The Commission has authorised code sharing between Qantas and wholly-owned subsidiary companies on a number of other routes and will do so in this case.

4 Determination allocating capacity on the South Africa route to Qantas ([2008] IASC 109)

4.1 The Commission makes a determination in favour of Qantas, allocating two frequencies per week in each direction for services between Australia and Johannesburg, Capetown and/or Durban on the South Africa route.

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

4.3 The determination is subject to the following conditions, which apply to Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas:

- Qantas is required to fully utilise the capacity from no later than 31 July 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;
- Qantas is not 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;
- 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:
 - 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 – South Africa air services arrangements.

Dated: 17 July 2008

John Martin
Chairman

Philippa Stone
Member

Ian Smith
Member