



Australian Government

International Air Services Commission

DECISION

Decision: [2008] IASC 204
Variation of: [2007] IASC 123
The Route: Papua New Guinea
The Applicant: Qantas Airways Limited
(ACN 009 661 901) (Qantas)
Public Register: IASC/APP/200806

1 The application

1.1 On 2 April 2008, Qantas applied to the Commission for a variation to Determination [2007] IASC 123 (the Determination) to permit Express Freighters Australia Pty Ltd (EFA), a wholly-owned subsidiary of Qantas, to operate freight services on the Papua New Guinea route. Qantas also requested the ability for any wholly-owned subsidiary of Qantas to use the capacity allocation to provide joint services with Qantas or with any other wholly-owned subsidiary of Qantas.

1.2 The Determination allocates thirty-four tonnes of freight capacity per week to Qantas on the route and the conditions of the Determination currently permit operations by Qantas alone.

1.3 At the time of its original application for capacity in 2007, Qantas advised that it proposed to operate two services per week between Cairns and Port Moresby using Boeing 737-300 aircraft with a freight capacity of 17 tonnes, and that the services would commence in early 2008. In mid-April 2008, Qantas advised that it is currently operating one service per week on the route and EFA will commence operating both services on receipt of the necessary regulatory approvals.

1.4 The Commission published a notice on 9 April 2008 inviting submissions about the application. No submissions were received. All material supplied by the applicant is filed on the Register of Public Documents.

2 Delegate's consideration

2.1 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.

2.2 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.

2.3 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.

2.4 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 delegate considers that EFA, as a wholly-owned subsidiary of Qantas, meets the paragraph 4 criteria.

2.5 Section 15(2)(e) of the Act requires the Commission to include a condition in determinations stating the extent to which the carrier may use allocated capacity in joint services with another carrier. Qantas has sought the flexibility for EFA to use the allocated capacity to provide joint services with Qantas or any wholly-owned subsidiary of the Qantas Group. The Commission has previously authorised the use of capacity in joint services between Qantas and its wholly owned subsidiaries on a number of routes and the delegate will do so in this case.

2.6 The delegate will vary the determination on the Papua New Guinea route as sought by Qantas.

3 Decision ([2008] IASC 204)

3.1 In accordance with section 24 of the Act, the Commission varies Determination [2007] IASC 123, which allocates capacity on the Papua New Guinea route, as requested by Qantas, by:

removing the following from paragraph 6.3 of Determination [2007] IASC 123:

- only 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;

adding the following to paragraph 6.3 of Determination [2007] IASC 123:

- 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 or with any other wholly-owned subsidiary of Qantas;

Dated: 16 April 2008

Michael Bird
Executive Director
Delegate of the IASC Commissioners