



INTERNATIONAL AIR SERVICES COMMISSION

DETERMINATION

DETERMINATION:	[2002] IASC 107
THE ROUTE:	SWITZERLAND
THE APPLICANT:	QANTAS AIRWAYS LIMITED (ACN 009 661 901) (QANTAS)
PUBLIC REGISTER FILE:	IASC/APP/200202

1 The application

1.1 On 8 February 2002, Qantas applied for an allocation of capacity on the Switzerland route. The application was in response to the Commission's notice of 10 January 2002 that it was conducting a review of all determinations allocating capacity to Ansett International Limited (Administrators appointed), including on the Switzerland route. Qantas is seeking seven third-country airline code share frequencies per week in each direction between Australia and Switzerland.

1.2 All material supplied by the applicant is filed on the Register of Public Documents.

2 Provisions of relevant air services arrangements

2.1 Seven third-country code share passenger frequency per week may be operated via intermediate points between Australia and Switzerland. Each code share service performed by a designated airline of Australia with an airline of a third country, whether as the operating or non-operating airline, counts as one frequency against this entitlement.

2.2 Additional capacity is available to enable own aircraft operations, and/or code share services between the designated airlines of Australia and Switzerland (so called 'bilateral code share'). This capacity is separate to that available for code sharing with third-country airlines. A total of seven frequencies per week may be utilised. Each bilateral code share frequency is the equivalent of 0.5 of a frequency in terms of the capacity entitlements for the designated airlines of Australia.

3 Commission's assessment

3.1 The Commission decided in Decision [2002] IASC 206 to revoke Ansett International's Determination IASC/DET/9823. This made available for immediate reallocation seven third-country airline code share frequencies per week in each direction between Australia and Switzerland.

3.2 Under paragraph 6.2 of the Minister's Policy Statement, in the absence of submissions about or opposing an application, the Commission is required only to apply the criteria in paragraph 4 of the Policy Statement. Under paragraph 4 the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. For an established international carrier such as Qantas, this means that there is public benefit arising from the use of the entitlements. Therefore, the Commission concludes that an allocation to Qantas of seven third-country code share frequencies per week in each direction on the Switzerland route would be of benefit to the public.

3.3 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 to code share with British Airways. The Commission has previously approved the operation of capacity by Qantas in joint services with British Airways and will do so in this case, subject to its usual conditions.

4 Determination allocating capacity on the Switzerland route to Qantas ([2002] IASC 107)

4.1 The Commission makes a determination in favour of Qantas, allocating seven third-country airline code share frequencies per week in each direction between Australia and Switzerland under the Australia – Switzerland air services arrangements.

4.2 The determination is for 5 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 1 April 2002;
- 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;
- 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;

- to the extent that the capacity is used to provide joint services on the route, 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 – Switzerland 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 – Switzerland air services arrangements.

Dated: 19 March 2002

Ross Jones
Chairman

Stephen Lonergan
Member

Michael Lawriwsky
Member