



# INTERNATIONAL AIR SERVICES COMMISSION

## DETERMINATION

**DETERMINATION NO:** [2003] IASC 103  
**THE ROUTE:** MALAYSIA  
**THE APPLICANT:** QANTAS AIRWAYS LIMITED  
(ACN 009 661 901)  
**PUBLIC REGISTER FILE:** IASC/APP/200306

### 1 The application

1.1 On 1 May 2003, Qantas applied for an allocation of 542 seats per week on the Malaysia route under the Australia – Malaysia air services arrangements. Qantas has requested flexibility in the determination to allow the capacity to be used by it or a wholly-owned subsidiary.

1.2 Qantas proposes that the capacity will be used by Australian Airlines to operate twice weekly B767-300 services on a routing of Cairns – Singapore – Kota Kinabalu – Sydney and vice versa. Services are planned to commence in June 2003 with a once weekly return service (on a different routing) between Sydney and Kota Kinabalu, switching to the Cairns routing after one month. Qantas advises that the intention is for the capacity to be fully used by the commencement of the Northern Winter scheduling period (end-October 2003).

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

### 2 Submissions received

2.1 On 6 May 2003, the Commission published a notice inviting submissions from interested parties about the application for capacity. Submissions were received from the Cairns Port Authority and Tourism Tropical North Queensland.

2.2 The Cairns Port Authority (CPA) supported the proposal. It noted that there are no direct flights between Cairns and Malaysia and that the new services would bring positive benefits for Australian tourism and provide associated economic benefits. The CPA considered that the services add to Australian Airlines existing network (which is based in Cairns) and would assist in the sustainable development of Cairns as a regional destination. In particular, the services would extend current Australian Airlines services between Sydney – Cairns and Cairns – Singapore. The CPA sees Kota Kinabalu as providing a linkage between Cairns and European markets, improving the potential for European traffic to flow to Cairns. The presence

of a strong convention market in Kota Kinabalu is seen by the CPA as offering scope to expand business travel from Sydney/Cairns.

2.3 Tourism Tropical North Queensland (TTNQ) is the regional tourism organisation for the Tropical North Queensland region. It fully supported the application. TTNQ noted that tourism is the dominant component of the economy of Tropical North Queensland, depending more on international tourists than any other Queensland tourism region. The TTNQ states that the decision by Qantas to base Australian Airlines in Cairns has given the region credibility as a tourism gateway and that Cairns needs to build on this initiative. The operation of the new route by Australian Airlines has the potential to increase traffic and thus visitor arrivals to the region, including by creating important links to European markets.

### **3 Provisions of relevant air services arrangements**

3.1 Operation of the capacity involved in each application is consistent with the provisions of the Australia-Malaysia and Australia – Singapore air services arrangements.

3.2 According to the Register of Available Capacity there are 17,800 seats per week available for immediate allocation on the Malaysia route.

### **4 Commission's consideration**

4.1 Under paragraph 6.2 of the Minister's policy statement, where submissions are received about an application, the Commission is required to apply the criteria in paragraph 4 of the policy statement and may also apply the additional public benefit criteria under paragraph 5 of the policy statement. In this case, both submissions received were supportive of the application, so the Commission will apply only the paragraph 4 criteria in this case. 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. The Commission has previously considered and approved the use of capacity by Australian Airlines on other routes and has no doubt that the airline meets the paragraph 4 criteria. Therefore, the Commission concludes that an allocation to Qantas of 542 seats of capacity per week on the Malaysia route (available for use by Qantas or a wholly-owned subsidiary) would be of benefit to the public.

### **5 Determination allocating capacity on the Malaysia route to Qantas ([2003] IASC 103)**

5.1 The Commission makes a determination in favour of Qantas Airways Limited, allocating 542 seats of capacity per week in each direction between Australia and Malaysia.

5.2 The determination is for five years from the date of this determination.

5.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity by no later than 31 October 2003, 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;
  - 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 - Malaysia 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 – Malaysia air services arrangements.

Dated: 30 May 2003

Ross Jones  
Chairman

Michael Lawriwsky  
Member

Stephen Lonergan  
Member