



## **Australian Government**

### **International Air Services Commission**

#### **DETERMINATION**

**Determination:** [2003] IASC 119  
**The Route:** Malaysia  
**The Applicant:** Qantas Airways Limited (Qantas) (ACN 009 661 901)  
**Public Register File:** IASC/APP/200323

#### **1 The application**

1.1 On 17 October 2003, Qantas applied for an allocation of 608 seats per week on the Malaysia route, for services to be operated by Australian Airlines. Australian Airlines plans to add two B767-300 services per week to Kota Kinabalu by early December 2003, bringing to four per week the number of services it operates to this point. Two services will operate on a direct Sydney – Kota Kinabalu route and two from Cairns to Kota Kinabalu via Singapore. Qantas has also sought approval for the capacity to be able to be used in joint services between Qantas and Australian Airlines.

1.2 The Commission published a notice on 23 October 2003 inviting applications for capacity on the route or submissions about the Qantas application. No applications or submissions were received. All material supplied by the applicant is filed on the Register of Public Documents.

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

2.1 The proposal is consistent with entitlements for Australian carriers under the Australia – Malaysia air services arrangements. There is ample capacity available to Australian carriers with unrestricted capacity and frequency for services to/from points other than Sydney, Melbourne, Brisbane and Perth and 20,058 seats per week to/from those four points.

#### **3 Commission's assessment**

3.1 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 Australian Airlines (a wholly-owned subsidiary

of Qantas), this means that there is public benefit arising from the use of the entitlements.

3.2 Qantas has sought slightly more seats than is required to implement its proposals, to give it a total of 1150 seats per week compared with the necessary 1084 seats. Qantas has sought the additional seats to give it some flexibility in the operation of its services. In view of the ample capacity available to Australian carriers, the Commission has no objection to the proposal. The Commission concludes that an allocation to Qantas of 608 seats per week in each direction on the Malaysia route would be of benefit to the public.

3.3 The Commission has granted in previous decisions authority for allocated capacity to be used in joint services between Qantas and Australian Airlines, including on the Malaysia route, and will grant such authority in this case.

#### **4 Determination allocating capacity on the Malaysia route to Qantas ([2003] IASC 119)**

4.1 The Commission makes a determination in favour of Qantas, allocating 608 seats per week in each direction on the Malaysia route under the Australia - Malaysia 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, or another Australian carrier which is a wholly-owned subsidiary of Qantas, is required to utilise the capacity;
- only Qantas, or another Australian carrier which is a wholly-owned subsidiary of Qantas, is permitted to utilise the capacity;
- the capacity may be used by Australian Airlines to provide joint services with Qantas and vice versa between Australia and Malaysia;
- to the extent that the capacity is used to provide joint services on the route, Qantas and Australian Airlines 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 Qantas, or another Australian carrier which is a wholly-owned subsidiary of Qantas, 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: 31 October 2003

Michael Lawriwsky  
Member Presiding

Stephen Lonergan  
Member