



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2003] IASC 122
The Route: Greece
The Applicant: Qantas Airways Limited (Qantas) (ACN 009 661 901)
Public Register File: IASC/APP/200327

1 The application

1.1 On 27 October 2003, Qantas applied for an allocation of 200 third party code share seats per week on the Greece route. Qantas plans to code share on daily Gulf Air services between Singapore and Athens via Bahrain commencing 23 November 2003.

1.2 In line with amendments to the *International Air Services Commission Act 1992* (the Act) which took effect on 19 June 2003 and associated *International Air Services Commission Amendment Regulations 2003 (No.1)*, which took effect on 21 October 2003, the Commission published a notice inviting applications for capacity on the route but not submissions. No applications 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 – Greece air services arrangements. A designated airline of Australia may enter into arrangements with an airline or airlines of a third country to carry out agreed services over the whole or any part of the route through code share or other co-operative arrangements. There are 800 third party code share seats and 2,100 seats of passenger capacity available for immediate allocation on the Greece route.

2.2 On the Bahrain route, capacity offered by a designated airline of Australia, as the marketing airline, on services operated by other airlines will not be counted against Australia's capacity entitlements. Accordingly Qantas does not require an allocation of capacity to code share on services on the Bahrain route.

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

3.2 The Commission concludes that an allocation to Qantas of 200 third party code share seats per week in each direction on the Greece route would be of benefit to the public.

3.3 Section 15(2)(e) 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 will be used to code share with Gulf Air. The Commission has previously authorised the code share agreement between Qantas and Gulf Air. For code sharing on the Greece route the Commission understands that modifications to the routes covered by the agreement need to be settled between the two carriers. The Commission understands from Qantas that these modifications are expected to be relatively minor. The Commission will authorise the use of the capacity in joint services, provided that the code share agreement is materially consistent with the current code share agreement dated 13 March 2002 and that the final code share agreement is submitted to the Commission as soon as practicable.

4 Determination allocating capacity on the Greece route to Qantas ([2003] IASC 122)

4.1 The Commission makes a determination in favour of Qantas, allocating 200 third party code share seats per week in each direction on the Greece route under the Australia - Greece 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 is required to fully utilise the capacity;
- only Qantas is permitted to utilise the capacity;
- the capacity may be used by Qantas to provide services jointly with Gulf Air in accordance with:
 - the previously supplied code share agreement dated 13 March 2002 and the finalised code share agreement, which must be provided to the Commission as soon as practicable, including such additional conditions (if any) as the Commission may require;
 - or any subsequent code share agreement between Qantas and Gulf Air for operations on the Australia-Greece route with the prior approval of the Commission; and
- under any code share agreement with Gulf Air:

- Qantas must price and sell its services on the route independently of Gulf Air;
- Qantas must not share or pool revenues on the route with Gulf Air;
- 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 – Greece 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 - Greece air services arrangements.

Dated 12 November 2003

Stephen Lonergan
Member Presiding

Michael Lawriwsky
Member