



INTERNATIONAL AIR SERVICES COMMISSION

DECISION

DECISION:	[2003] IASC 203
VARIATION OF:	IASC/DET/9813, [2002] IASC 113 & [2002] IASC 123
THE ROUTE:	INDONESIA
THE APPLICANT:	QANTAS AIRWAYS LIMITED
	(ACN 009 661 991) (QANTAS)
PUBLIC REGISTER:	IASC/APP/200304

1 The application

1.1 On 5 March 2003, Qantas applied to the Commission to vary determinations allocating capacity to Qantas on the Indonesia route to permit some or all of the capacity to be operated by a wholly owned subsidiary. At this time, Qantas envisages that some services would be operated by Australian Airlines Ltd (AAL), (ACN 099 625 304).

1.2 AAL is planning to operate services from Melbourne and Sydney to Denpasar and beyond to Singapore commencing late July 2003. Qantas proposes to code share on AAL's flights for cargo sales only.

1.3 All non-confidential material supplied by the applicant is filed on the Register of Public Documents.

2 Submissions received

2.1 The Commission published a notice on 10 March 2003 inviting submissions from interested parties about the application. Submissions were received from Mr Philip Kilvington and Virgin Blue.

2.2 Virgin Blue had no objections to Qantas' application for a subsidiary to operate some of the capacity from Qantas' existing allocation.

2.3 Mr Kilvington claimed that Qantas had advertised that travellers on any wholly owned Qantas subsidiary would earn status credits in addition to frequent flyer points. Mr Kilvington stated that while Australian Airlines was a wholly owned subsidiary it did not award frequent flyer points, status credits or permit patrons to access Qantas Club lounges. He claimed that Australian Airlines charged the same average fare as when Qantas operated the route yet was offering a reduced service.

2.4 Qantas responded to Mr Kilvington's submission on 14 April 2003. Qantas stated that in July 2002 changes were made to the terms and conditions of the frequent flyer program reflecting AAL's decision not to allow passengers to earn frequent flyer points on any of its services which commenced in October 2002. Frequent Flyer points can be redeemed for award flights on AAL's services.

2.5 Section 13.1.3 of terms and conditions of Qantas's frequent flyer program states: "Status credits are only earned on eligible flights of Qantas, oneworld alliance airlines, Air Pacific and/or wholly owned Qantas subsidiary airlines as determined by Qantas". Qantas submitted that this section is currently being redrafted to make it clear that, as determined by Qantas, status credits cannot be earned on AAL's services.

2.6 In regard to access to Qantas club lounges, Qantas submitted that the terms and conditions make it clear that only Chairman's Lounge card holders and Platinum Frequent Flyers members are permitted lounge access when departing on an AAL service.

3 Provisions of relevant air services arrangements

3.1 Australia's air services arrangements with Indonesia permit multiple designation of Australian carriers.

4 Commission's assessment

4.1 The Commission has noted Mr Kilvington's submission but is of the view that the matters raised are not relevant to determination of the present application.

4.2 The *International Air Services Commission Act 1992* (the Act) allows for capacity to be used by a wholly owned subsidiary of another Australian carrier. Section 15(2)(ea) 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;
- (iii) if the carrier is a wholly-owned subsidiary of another Australian carrier - that other carrier;

4.3 Section 15(2A) states that if a determination includes a condition of a kind mentioned in paragraph 15(2)(ea), the determination may include conditions that are applicable to all, or some only, of the persons who are permitted to use the capacity concerned.

4.4 The variation being sought is to allow a wholly owned subsidiary to use the capacity and to permit code sharing for cargo sales only by Qantas on AAL operated services.

4.5 When considering applications to vary determinations the Commission must determine whether the determinations, as varied, would be of benefit to the public. Under paragraph 4 of the Minister's policy statement, the use of Australian entitlements is of benefit to the public. AAL is already operating on a number of routes and in the Commission's view is reasonably capable of obtaining the necessary approvals to operate on the Indonesia route and of implementing its proposals. This means that there is public benefit arising from the use of capacity.

4.6 Pursuant to s.15(2)(e) of the Act, a carrier cannot use allocated capacity by providing services jointly with any another carrier without the prior approval of the Commission. Qantas currently has no code share operations on the Indonesia route. The proposed code sharing for cargo sales only would enable Qantas to continue to market and sell cargo capacity from Sydney and Melbourne to Denpasar. There appears to be no public detriment in approving the restricted code share arrangement being sought.

4.7 Qantas has not yet provided the Commission with a code share agreement between Qantas and AAL. In this case the Commission does not require the code share agreement as the approval is limited to cargo sales only by a parent airline on a wholly owned subsidiary.

4.8 The Commission will vary the determinations as requested.

5 Decision [2003] IASC 203

5.1 In accordance with section 24 of the Act, the Commission varies Determinations IASC/DET/9813, [2002] IASC 113 & [2002] IASC 123 which allocate capacity on the Indonesia route, as requested by Qantas, by:

removing the following conditions from IASC/DET/9813, [2002] IASC 113 & [2002] 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 conditions to each of the Determinations:

- 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 Australian Airlines to provide joint services with Qantas for cargo sales only between Australia and Indonesia.

Dated: 23 April 2003

Ross Jones
Chairman

Stephen Lonergan
Member

Michael Lawriwsky
Member