



INTERNATIONAL AIR SERVICES COMMISSION

DECISION

DECISION: [2003] IASC 205
VARIATION OF: [2003] IASC 103
THE ROUTE: MALAYSIA
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 991) (QANTAS)
PUBLIC REGISTER: IASC/APP/200308

1 The application

1.1 On 1 May 2003 Qantas applied for an allocation of capacity on the Malaysia route for use by either Qantas or a wholly owned subsidiary. On 30 May 2003 the Commission issued determination [2002] IASC 103 allocating 542 seats per week to Qantas as requested in its application on 1 May 2003.

1.2 On 23 May 2003, Qantas sought to amend its application to enable joint operations for both passengers and cargo on the Malaysia route. The Commission published a notice on 30 May 2003 inviting submissions from interested parties about the application for joint passenger and cargo services. No submissions were received.

1.3 Qantas proposes that Australian Airlines will use the capacity allocated by Determination [2003] IASC 103 on a code share basis with Qantas to provide services to Kota Kinabalu with some services going via Singapore.

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

2 Provisions of relevant air services arrangements

2.1 Australia's air services arrangements with Malaysia permit multiple designation of Australian carriers and code sharing arrangements between any Australia, Malaysian or third country airlines provided the airlines hold the appropriate authority.

3 Commission's assessment

3.1 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.

3.2 While Qantas proposes to code share on Australian Airlines' services for cargo sales only it has requested approval to code share for passenger services as well. In its application Qantas submitted that authorisation for the Qantas code to be placed on Australian Airlines' services and vice versa, for cargo and passenger services, or both, should be capable of routine authorisation within the capacity allocation whenever a determination allows for the use of capacity by Qantas and Australian Airlines.

3.3 The issue the Commission considers to be relevant to the question of code sharing between Qantas and Australian Airlines, particularly in relation to code sharing

for passenger carriage, concerns competition between Qantas and Australian Airlines. The Commission accepts that there are likely to be few if any situations where the two carriers would both operate their own services on exactly the same routing. As the Commission understands it, the two carriers have tended to operate in markets which best match their product and cost structures to the particular market. They therefore have operated in different markets, although there are and may be in future cases where both operate on a route but on different city pairs (such as Australia – Japan). Australian Airlines offers only economy class seats, and is therefore unlikely to service markets with a significant business component.

3.4 Allowing the two carriers to code share with each other when only one operates a route is likely to make little difference to the low likelihood that the other would enter onto the same route. Even were both to operate, they would be unlikely to compete with each other on price, being parent and subsidiary. However, there may be some non-price options available, such as through marketing. Overall though, as matters stand, there can generally be expected to be no lessening of benefits to the public from permitting Qantas and Australian Airlines to code share with each other.

3.5 Qantas has not 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 sales by a parent airline on a wholly owned subsidiary and vice versa.

3.6 The Commission will vary the determinations as requested.

4 Decision [2003] IASC 205

4.1 In accordance with section 24 of the Act, the Commission varies Determination [2003] IASC 103 which allocate capacity on the Malaysia route, as requested by Qantas, by:

adding the following conditions to Determination [2003] IASC 103:

- 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.

Dated: 18 June 2003

Ross Jones
Chairman

Stephen Lonergan
Member

Michael Lawriwsky
Member