



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2004] IASC 102
The Route: United Kingdom
The Applicants: Qantas Airways Ltd (ACN 009 661 901) (Qantas) and
Backpackers Xpress Pty Ltd (ACN 104 183 851)
(Backpackers Xpress)
Public Register File: IASC/APP/200403 (United Kingdom)

1 The applications

1.1 On 17 February 2004, Qantas applied for an allocation of seven services per week on the United Kingdom (UK) route. Qantas plans to commence three B747 services per week between eastern Australia and London in November 2004. Four additional flights are planned to be phased in during 2005, so that all the capacity sought would be fully utilised by November 2005. The introduction of the seven services would bring to 28 the total number of services operated by Qantas to London. Qantas advised that the intermediate points to be served would be decided at a later time. Qantas noted that timeslots to operate the services had been obtained at London's Heathrow airport. Qantas sought approval for British Airways to code share on the proposed services, under the terms of the Restated Joint Services Agreement (JSA) between the two airlines.

1.2 In response to the Qantas application, the Commission published a notice on 23 February 2004 inviting other applications for all or any part of the capacity sought by Qantas. On 1 March 2004, an intention to apply for capacity on the UK route was received from Backpackers Xpress. An application for capacity from Backpackers Xpress was received on 24 March 2004. Backpackers Xpress sought an allocation of three services per week on the UK route. Backpackers Xpress proposed to commence services from November 2004, using B747 aircraft. Backpackers also sought capacity on the India route (in response to an application from Qantas), Germany and Thailand routes. These applications are the subject of separate determinations.

1.3 All public material supplied by the applicants and by submitters is filed on the Register of Public Documents. Commercial in confidence material provided by the applicants is filed on the Commission's Confidential Register.

2 Provisions of relevant air services arrangements and capacity available for allocation

2.1 Operation of the capacity proposed is consistent with the provisions of the Australia - UK air services arrangements. The Register of Available Capacity indicates that there are seven services per week for passenger services available for allocation to Australian carriers on the UK route.

3 Commission's assessment

3.1 Under paragraph 6.2 of the Minister's policy statement, where there are other applications or submissions received about or opposing a proposal, as in this case, the Commission may apply both the paragraph 4 criteria and the additional criteria in paragraph 5 of the policy statement.

3.2 As Backpackers Xpress has sought only three services per week on the UK route compared with the seven services sought by Qantas and available for allocation, this means that four services are not contested between the two carriers. The Commission understands from Qantas that it wishes the Commission to consider allocating to Qantas the uncontested four services per week as soon as possible. Qantas' application for the remaining three services would be the subject of separate consideration, together with the competing application from Backpackers Xpress.

3.3 The Commission has no objection to the approach preferred by Qantas and, in this determination, will consider the Qantas application only in respect of four services per week. Early consideration of the application for four services is consistent with the Commission's practice of dealing with matters before it as quickly as possible in accordance with the requirements of the Act and policy statement. The Commission also notes Qantas' advice that it has obtained landing slots necessary to operate the seven services per week it has sought. The allocation of capacity now will serve to provide Qantas with certainty about the ability to utilise four of the landing slots.

3.4 The Commission's decision to consider the four weekly services separately from the other three does not prejudice in any way the Backpackers Xpress claims to be allocated three services per week. It should not be taken to imply any preconceived position by the Commission in its consideration of the competing applications for the three services per week on the UK route. Those contested applications will be the subject of a separate and later determination by the Commission.

3.5 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 (4(b)(i)) and of implementing its proposals (4(b)(ii)) is of benefit to the public. For an established carrier such as Qantas, this means that there is public benefit arising from the use of the entitlements.

3.6 The Commission notes that Qantas proposed in its application to bring three services per week into service by the beginning of November 2004, with the balance

planned for commencement over the following 12 months. The Commission will require that three of the four services allocated in this determination be commenced by 30 November 2004, with all of the capacity to be fully utilised by 30 April 2005.

3.7 Qantas has sought approval for British Airways to code share on the services in accordance with the JSA. 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. The Commission will authorise the use of the capacity in joint services with British Airways on terms consistent with those in the other determinations allocating capacity to Qantas on the UK route.

4 Determination allocating capacity on the United Kingdom route to Qantas [2004] IASC 102

4.1 The Commission makes a determination in favour of Qantas Airways Limited, allocating four services per week in each direction between Australia and the United Kingdom.

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

4.3 The determination is subject to the following conditions:

- Qantas is required to utilise three of the four weekly services by no later than 30 November 2004, with the capacity to be fully utilised by 30 April 2005.
- only Qantas is permitted to utilise the capacity;
- the capacity may be used by Qantas to provide services jointly with British Airways in accordance with:
 - the code share agreement dated 5 October 1997; or
 - any new code share agreement, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the arrangements with British Airways, Qantas may only price and market its services, or share or pool revenues/profits on the route, jointly with British Airways as long as such practices are authorised under the *Trade Practices Act 1974* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal;
- 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 – United Kingdom 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 – United Kingdom air services arrangements.

Dated: 1 April 2004

John Martin
Chairman

Stephen Lonergan
Member

Michael Lawriwsky
Member