



Australian Government

International Air Services Commission

DETERMINATION

Determination:	[2005] IASC 112
The Route:	India
The Applicant:	Qantas Airways Limited (Qantas) (ACN 009 661 901)
Public Register:	IASC/APP/200515

1 The application

1.1 On 22 September 2005, Qantas applied for an allocation of 300 third-country code share seats per week in each direction on the India route. The proposal is for passengers to be carried between Australia and Kolkata (formerly Calcutta) under a code share agreement between Qantas and Jetstar Asia. Under the proposed arrangements, Qantas would carry passengers on its flights between Australia and Singapore and vice versa, with Jetstar Asia flying these passengers between Singapore and Kolkata and vice versa on three services per week. Qantas plans to commence the code share arrangements with effect from 1 December 2005. Qantas advised that there are no plans at this stage for Jetstar Asia to code share on Qantas' Australia – Singapore flights.

1.2 On 27 September 2005, the Commission published a notice inviting applications from interested parties for some or all of the capacity available on the route. No applications were received. All material supplied by the applicant is filed on the Commission's Register of Public Documents.

2 Provisions of relevant air services arrangements

2.1 Operation of the capacity involved in the application is consistent with the provisions of the Australia - India air services arrangements. The arrangements permit Australian carriers to enter into code share arrangements as the non-operating airline with airlines of third countries. According to the Register of Available Capacity, from October 2005 the designated airline(s) of Australia may code share on services operated by third party airline(s) using separate capacity entitlements of 1,375 seats per week to and from Mumbai, New Delhi, Kolkata, Chennai and Bangalore.

2.2 The air services arrangements between Australia and Singapore place no limitations on code sharing between designated airlines of the two countries. Jetstar Asia is a designated airline of Singapore.

3 Commission's consideration

3.1 Under paragraph 6.2 of the Minister's policy statement (No. 5), of 19 May 2004, the Commission is required only to apply the criteria in paragraph 4 of the policy statement in this case. Under paragraph 4, the use of entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. In addition, Section 15(2)(e) of the *International Air Services Commission Act 1992* (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.

3.2 The circumstances of this case differ from those usually applying to code share applications. In most cases, the Commission considers the allocation of capacity in terms of paragraph 4, then separately assess whether use of that capacity for code sharing should be authorised pursuant to section 15(2)(e) of the Act. In this case, the capacity sought is specifically for use in code share operations. If the Commission was not prepared to allow the use of the capacity for joint services, there would be no value in allocating the capacity, because it would be unusable for own-use operations.

3.3 The Commission considers that the proposed services would provide another means for Qantas to offer and market services between Australia and India. Although Qantas currently operates to India, it serves Mumbai only. Passengers wishing to travel to or from Kolkata via Mumbai must make a domestic connection at Mumbai. The new code share service should benefit Australian consumers wishing to travel to Kolkata via Singapore, with convenient connections between Qantas' frequent Singapore services and Jetstar Asia services to and from Kolkata. The Australian tourism industry should also benefit through associated marketing efforts by Qantas of travel to Australia from Kolkata.

3.4 There appears to be little likelihood of a negative impact on the level of competition in services between Australia and India as a result of the code share arrangement. Also, the arrangement does not involve Jetstar Asia code sharing on Qantas' services between Australia and Singapore, so there are no potential competition concerns in relation to that part of the overall route.

3.5 The Commission considers that, in terms of paragraph 4 of the Minister's policy, the use of the entitlements by Qantas, as an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals, is of benefit to the public. The Commission will authorise the use of the capacity in joint services with Jetstar Asia, subject to Qantas providing the finalised code share agreement to the Commission before the commencement of the services. The Commission will issue a five year determination.

4 Determination allocating capacity on the India route to Qantas ([2005] IASC 112)

4.1 The Commission makes a determination in favour of Qantas, allocating 300 third-country code share seats per week in each direction on the India route.

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 fully utilise the capacity from no later than 31 December 2005, or from such other date approved by the Commission;
- only Qantas is permitted to utilise the capacity;
- the capacity may be used by Qantas to provide services jointly with Jetstar Asia in accordance with:
 - the finalised code share agreement between Qantas and Jetstar Asia, subject to the finalised code share agreement being approved by the Commission, with such additional conditions (if any) as the Commission may require, prior to the commencement of services;
 - or any subsequent code share agreement between Qantas and Jetstar Asia for operations on the Australia – India route, with the prior approval of the Commission;
- under any code share agreement with Jetstar Asia:
 - Qantas must price and sell its services on the route independently of Jetstar Asia;
 - Qantas must not share or pool revenues on the route with Jetstar Asia.
- 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, at the time of ticket reservation, of the carrier actually operating the flight;
- 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 - India 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 – India air services arrangements.

Dated: 17 October 2005

John Martin
Chairman

Michael Lawriwsky
Member

Vanessa Fanning
Member