



Australian Government

International Air Services Commission

DETERMINATION

Determination:	[2006] IASC 105
The Route:	United Kingdom
The Applicant:	Qantas Airways Limited (ACN 009 661 901) (Qantas)
Public Register File:	IASC/APP/200612

1 The application

1.1 On 10 August 2006, Qantas applied for an allocation of unlimited capacity on the United Kingdom (UK) route. The application was made as a consequence of recently revised air services arrangements concluded between the Australian and UK Governments. The new arrangements remove the previous restrictions limiting the capacity and frequency that Australian designated airlines may operate on the UK route. Concurrently with the application for capacity, Qantas sought the revocation of its five existing determinations which together allocate 28 services per week on the route (see separately Decision [2006] IASC 220).

1.2 Qantas also sought authority for the capacity to be exercised by Qantas and any wholly-owned subsidiary of Qantas, and approval for code sharing among Qantas and its wholly-owned subsidiaries. Qantas also requested that the conditions attaching to the existing determinations be reflected in the new determination which supersedes them. These conditions authorise code sharing by British Airways and Air Malta on Qantas services and that all services may be operated under the Qantas/British Airways Joint Services Agreement (JSA), while authorisation by the Australian Competition and Consumer Commission (ACCC) remains in place.

1.3 The Commission published a notice on 16 August 2006 inviting applications for capacity on the route. 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 Under the Australia – United Kingdom air services arrangements Australian designated carriers may now determine the frequency, capacity and aircraft type to be operated on the routes available under the arrangements and may exercise traffic rights on these routes.

3 Commission's assessment

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. 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. 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 Act allows for allocated capacity to be used by a wholly-owned subsidiary of another Australian carrier. Section 15(2)(ea) of the Act 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; and,
- (iii) if the carrier is a wholly-owned subsidiary of another Australian carrier - that other carrier.

3.3 Although Qantas has not indicated any immediate plans for the use of the capacity by subsidiaries, it has sought the ability to do so in the interests of commercial and operational flexibility. The Commission has previously allocated capacity to Qantas to be used by wholly-owned subsidiaries of Qantas on a number of other routes. The Commission will authorise the use of the capacity by Qantas' wholly-owned subsidiaries on the UK route.

3.4 Consistent with the Minister's policy statement in relation to circumstances where capacity on a route is not limited, as in this case, the period of the determination will be 10 years.

3.5 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 has previously authorised code sharing by Qantas with British Airways and Air Malta and will authorise a continuation of those arrangements on the same conditions as currently apply.

4 Determination allocating capacity on the United Kingdom route to Qantas ([2006] IASC 105)

4.1 The Commission makes a determination in favour of Qantas, allocating unlimited capacity and frequency on the United Kingdom route under the Australia – United Kingdom air services arrangements.

4.2 The determination is for ten years from the date of the determination.

4.3 The determination is subject to the following conditions:

- Qantas, or another Australian carrier which is a wholly-owned subsidiary of Qantas, is required to utilise the capacity;

- only Qantas, or another Australian carrier which is a wholly-owned subsidiary of Qantas, is permitted to utilise the capacity;
- the capacity may be used by any wholly-owned subsidiary to provide joint services with Qantas;
- 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;
- the capacity may be used by Qantas to provide services jointly with Air Malta in accordance with:
 - the code share agreement dated 1 March 2005 and the finalised Amendment Annex, signed by Qantas and Air Malta, being approved by the Commission, with such additional conditions (if any) as the Commission may require, prior to the code share services commencing;
 - or any subsequent code share agreement between Qantas and Air Malta for operations on the Australia – United Kingdom route with the prior approval of the Commission;
- under any code share agreement with Air Malta:
 - Qantas must price and sell its services on the route independently of Air Malta;
 - Qantas must not share or pool revenues on the route with Air Malta;
- to the extent that the capacity is used to provide joint services on the route, Qantas and any wholly-owned subsidiary of 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 Qantas, or another Australian carrier which is a wholly-owned subsidiary of Qantas, 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 September 2006

John Martin
Chairman

Vanessa Fanning
Member

Michael Lawriwsky
Member