



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2006] IASC 128
The Route: Vanuatu
The Applicant: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/200617

1 The application

1.1 On 16 October 2006, Qantas applied for an allocation of 100 seats per week of capacity on the Vanuatu route. Qantas has existing allocations totalling 300 seats per week on the route and sought the additional capacity to expand the number of seats it is able to sell on Air Vanuatu's services under the code share arrangement Qantas has with that airline.

1.2 The Commission published a notice on 20 October 2006 inviting applications from interested parties 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 Operation of the capacity involved in the application is consistent with the provisions of the Australia - Vanuatu air services arrangements. According to the Register of Available Capacity, there are 380 seats per week in each direction available for immediate allocation.

3 Delegate's consideration

3.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (the Act) and regulation 3A of the *International Air Services Commission Amendment Regulations 2003 (No.1)*, the delegate of the Commission considers the Qantas application.

3.2 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. For an established international carrier such as Qantas, this means that there is public benefit arising from the use of the entitlements.

3.3 Section 15(2)(e) of the Act requires the Commission to include a condition in determinations stating the extent to which the carrier may use allocated capacity in joint services with another carrier. The Commission has previously authorised the use of capacity in joint services between Qantas and Air Vanuatu and the delegate will do so in this case. The authorisation will be subject to the amended Annex to the existing code share agreement between the two carriers being submitted to the Commission prior to the services commencing.

4 Determination allocating capacity on the Vanuatu route to Qantas ([2006] IASC 128)

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating 100 seats per week in each direction on the Vanuatu 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 2006, 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 joint services with Air Vanuatu in accordance with:
 - the Code Share Agreement between Air Vanuatu and Qantas dated 7 July 2006 and the finalised amended Annex, signed by Qantas and Air Vanuatu, 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 new code share agreement, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under any code share agreement with Air Vanuatu:
 - Qantas must price and sell its services on the route independently of Air Vanuatu;
 - Qantas must not share or pool revenues on the route with Air Vanuatu;

- 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 - Vanuatu air services arrangements; 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 results in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia - Vanuatu air services arrangements.

Dated: 31 October 2006

Michael Bird
Executive Director
Delegate of the IASC Commissioners