



Australian Government

International Air Services Commission

DETERMINATION AND DECISION

Determination:	[2006] IASC 103
Decision:	[2006] IASC 209
Variation of:	[2002] IASC 116 & [2004] IASC 120
The Route:	Japan
The Applicant:	Qantas Airways Limited (Qantas) (ACN 009 661 901)
Public Register:	IASC/APP/200602

1 The application

1.1 On 12 April 2006, Qantas applied for an allocation of 2.4 B767-200 equivalent units of capacity per week on the Japan route to permit Jetstar, a wholly-owned subsidiary of Qantas, to operate services on the Japan route. Jetstar plans to operate a daily service on a Sydney – Osaka – Brisbane – Sydney routing. The services are proposed to commence in March 2007 and to be operated using A330-200 aircraft with 303 seats in a two-class configuration. Qantas proposes to code share on Jetstar's services.

1.2 Qantas advised in its application that a total of 10.5 B767-200 equivalent units of capacity per week are required to operate the services. Qantas indicated that, in addition to the 2.4 weekly units applied for, 8.1 units were planned to be exercised under existing allocations to Qantas. This capacity would be available for Jetstar operated services through various developments in Qantas-group Japan operations including the withdrawal of services by Australian Airlines and lesser use of capacity by Qantas than had been planned.

1.3 Qantas sought variations to the conditions of Determinations [2002] IASC 116 and [2004] IASC 120 to extend until 30 April 2007 the date by which the capacity must be fully utilised, and to permit the capacity to be used in joint services between Qantas and any wholly-owned subsidiary of the Qantas group.

1.4 The Commission published a notice on 19 April 2006, inviting other applications for capacity and/or submissions about the variation request. Submissions were received from Gold Coast Tourism on 21 April 2006 and from the Queensland Government on 26 April 2006.

1.5 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 – Japan air services arrangements, the designated airlines of Australia may operate services between points in Australia to specified points in Japan, including Osaka. The Register of Available Capacity shows that there are the equivalent of eight B767-200 equivalent units of capacity available for year-round allocation. Under the aircraft substitution arrangements, one A330 aircraft frequency is the equivalent of 1.5 B767-200 units of capacity.

3 Summary of submissions received

3.1 Gold Coast Tourism supported the application for daily Jetstar services on the Japan route, noting that there had been a substantial decline in capacity since September 2001 with the loss of services by Ansett International, Air New Zealand and All Nippon. There was also the possibility of the withdrawal of Japan Airlines' services from April 2007.

3.2 The Queensland Government was also supportive of the application for capacity on the Japan route to enable Jetstar to commence services. The Queensland Government stated that south-east Queensland had suffered a major decline in capacity from western Japan over the past five years, with a combined loss of 18 weekly frequencies provided by Ansett International, All Nippon, Air New Zealand and Qantas. The introduction of daily services by Jetstar to Brisbane was seen as essential to the maintenance of the link to one of the major Japanese source markets for the Queensland tourism industry.

4 Commission's consideration

The allocation sought

4.1 The *International Air Services Commission Act 1992* (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.

4.2 Qantas is the only applicant for capacity. 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. The Commission has previously allocated capacity to Qantas to be used by Jetstar, a wholly-owned subsidiary of Qantas, on the New Zealand route (Decision [2005] IASC 2006). Jetstar is now an established international carrier, having operated services on the New Zealand route since December 2005. This means that there is public benefit arising from the use of the entitlements on the Japan route. The Commission will allocate the capacity sought by Qantas.

4.3 Section 15(2A) states that if a determination includes a condition of a kind mentioned in paragraph 15(2)(ea), the determination may include conditions that are applicable to all, or some only, of the persons who are permitted to use the capacity concerned. The conditions of the determination will apply to both Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas.

4.4 Under Section 15(2)(e) of the Act, 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. Qantas is proposing to code share on Jetstar-operated services.

4.5 The Commission has considered the issue of code sharing between Qantas and wholly-owned subsidiary companies on several occasions in relation to operations by Australian Airlines, another Qantas subsidiary, including on the Indonesia route - see Decision [2003] IASC 207. Similar decisions were made in respect of applications for code sharing on the Malaysia and New Zealand routes ([2003] IASC 205, and [2005] IASC 2006 respectively).

4.6 The Commission's position in those cases was that Qantas and Australian Airlines operated in different markets which best matched their product and cost structures and they would be unlikely to compete on price even where both carriers operated on the same route. The Commission concluded that there can generally be expected to be no lessening of public benefit from authorising the parent airline code sharing with the subsidiary airline. The Commission considers that the same conclusion is applicable in relation to code sharing between Qantas and Jetstar and will authorise code sharing between Qantas and its wholly-owned subsidiaries.

The variation sought

4.7 When considering applications to vary determinations, the Commission must decide whether the determinations, as varied, would be of benefit to the public. Under section 6.3 of the Minister's policy statement, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity and no submission is received about the application, only the criteria in paragraph 4 of the policy statement are applicable. Under paragraph 4, the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public

4.8 In Determinations [2002] IASC 116 and [2004] IASC 120, the conditions of the determinations provide flexibility for the Commission to approve changes to the date by which the capacity is to be fully utilised. The Commission will vary the determinations as requested by Qantas to require the capacity to be fully utilised by 30 April 2007. The Commission will also vary the determinations to permit the capacity to be used in joint services between Qantas and its wholly-owned subsidiaries.

5 Determination allocating capacity on the Japan route to Qantas ([2006] IASC 103)

5.1 The Commission makes a determination in favour of Qantas, allocating 2.4 B767-200 units of capacity per week in each direction between Australia and Japan.

5.2 The determination is for five years from the date of the determination.

5.3 The determination is subject to the following conditions, which apply to Qantas or another Australian carrier which is a wholly owned subsidiary of Qantas:

- Qantas is required to fully utilise the capacity from no later than 30 April 2007, or from such other date approved by the Commission;
- only Qantas or another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity;
- Qantas is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- the capacity may be used by any wholly-owned subsidiary of Qantas to provide joint services with Qantas;
- 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:
 - 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 – Japan air services arrangements.

6 Decision [2006] IASC 209

6.1 In accordance with section 24 of the Act, the Commission varies Determinations [2002] IASC 116 and [2004] IASC 120, which allocate capacity on the Japan route, as requested by Qantas, by:

For Determination [2002] IASC 116

removing the following conditions from [2002] IASC 116:

- “Qantas is required to commence utilisation no later than 30 November 2002 and fully utilise the capacity from no later than 30 April 2003, or from such other date approved by the Commission;”

adding the following conditions to [2002] IASC 116:

- “Qantas is required to fully utilise the capacity from no later than 30 April 2007, or from such other date approved by the Commission;”
- the capacity may be used by any wholly-owned subsidiary of Qantas to provide joint services with Qantas;
- 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;”

For Determination [2004] IASC 120

removing the following conditions from [2004] IASC 120:

- “Qantas is required to fully utilise the capacity from no later than 31 January 2005, or from such other date approved by the Commission;”

adding the following conditions to [2004] IASC 120:

- “Qantas is required to fully utilise the capacity from no later than 30 April 2007, or from such other date approved by the Commission;

- the capacity may be used by any wholly-owned subsidiary of Qantas to provide joint services with Qantas;
- 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;”

Dated: 8 May 2006

John Martin
Chairman

Vanessa Fanning
Member

Michael Lawriwsky
Member