



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2007] IASC 101
The Route: Malaysia
The Applicant: Qantas Airways Limited (Qantas)
(ACN 009 661 901)
Public Register: IASC/APP/200702

1 The application

1.1 On 23 January 2007, Qantas applied for an allocation of 909 seats per week of capacity on the Malaysia route to permit Jetstar, a wholly-owned subsidiary of Qantas, to operate services on the Malaysia route. Jetstar plans to operate three services per week between Sydney and Kuala Lumpur from September 2007. The services would 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 The Commission published a notice on 29 January 2007, inviting applications from interested parties for capacity on the route. No applications were received.

1.3 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 – Malaysia air services arrangements, the designated airlines of Australia may operate services with any type of aircraft between points in Australia and points in Malaysia.

2.2 The Register of Available Capacity shows that there 20,600 seats per week with any aircraft type available for allocation for services to and from Sydney, Melbourne, Brisbane and Perth. Unrestricted capacity is available for allocation for services to and from other points in Australia.

2.3 The designated airlines of Australia may enter into code sharing arrangements with other Australian airlines.

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 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.

3.3 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 permitted capacity allocated to Qantas to be used by Jetstar, a wholly-owned subsidiary of Qantas, on routes such as New Zealand and Vietnam.

3.4 Jetstar is now an established international carrier, having operated international services since December 2005. This means that there is public benefit arising from the use of the entitlements on the Malaysia route. The Delegate, on behalf of the Commission, will therefore allocate the capacity sought by Qantas.

3.5 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 and another Australian carrier which is a wholly-owned subsidiary of Qantas.

3.6 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 these Jetstar-operated services to Malaysia.

3.7 The Commission has considered the issue of code sharing between Qantas and wholly-owned subsidiary companies on several occasions including in relation to operations by Jetstar.

3.8 The Commission's position in those cases was that Qantas and its subsidiary generally 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. Accordingly, the Commission has previously authorised code sharing between Qantas and its wholly-owned subsidiaries in determinations relating to routes operated by Jetstar.

3.9 The Delegate, on behalf of the Commission, will therefore authorise code sharing between Qantas and its wholly-owned subsidiaries on the Malaysia route.

4 Determination allocating capacity on the Malaysia route to Qantas ([2007] IASC 101)

4.1 The Delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating 909 seats per week in each direction to and from Sydney, Melbourne, Brisbane and Perth on the Malaysia route.

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

4.3 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 September 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 – Malaysia air services arrangements.

Dated: 9 February 2007

Michael Bird
Executive Director
Delegate of the IASC Commissioners