Australian Government

International Air Services Commission

DECISION

Decision:	**[2007] IASC 208**
Variation of:	**[2006] IASC 129**
The Route:	**Papua New Guinea (PNG)**
The Applicant	**Qantas Airways Limited (ACN 009 661 901) (Qantas)**
Public Register File:	**IASC/APP/200709**

1 The application

1.1 On 14 May 2007, Qantas applied for a variation to Determination [2006] IASC 129 (the Determination), which allocates 1,000 seats of capacity per week on the PNG route, to permit it to continue code sharing on Air Niugini services between Sydney/Brisbane and Port Moresby and between Cairns and Port Moresby and vice versa. Authority was sought to code share for the period until 29 February 2008.

1.2 The proposed arrangement involves Qantas purchasing a hard block of seats on all Air Niugini services between Australia and PNG. Qantas also has an option to purchase a further soft block of seats on each flight. This arrangement represents a continuation of the arrangement that was authorised by the Commission in August 2002 (see Decision [2002] IASC 219). That authority expires on 30 June 2007. The code sharing will be conducted pursuant to the existing code share agreement between the airlines and any subsequent agreement which replaces it, subject to Commission approval. Qantas has yet to receive a code share proposal from Air Niugini to replace the current agreement which expires on 12 August 2007.

1.3 The Commission published a notice on 18 May 2007 inviting submissions about the application. No submissions were received. All public material supplied by the applicant is filed on the Register of Public Documents. Supporting confidential material supplied by Qantas is filed on the Commission's confidential register.

1.4 Concurrently with this application, Qantas applied for extended authorisation for the code sharing to continue until 30 June 2012, which is for the duration of the Determination. The application for longer term approval is the subject of separate Commission consideration, in consultation with PNG's Independent Consumer and Competition Commission (ICCC).

2 Provisions of relevant air services arrangements

2.1 Operation of the capacity as proposed in the application is consistent with the provisions of the Australia - PNG air services arrangements. Capacity exercised by the

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marketing carrier (in this case, Qantas) on the services of the operating carrier (Air Niugini) counts as the use of capacity entitlements under the air service arrangements.

3 Commission's assessment

3.1 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 of the Minister's Policy Statement (No. 5) of 19 May 2004, 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 Section 15(2)(e) of the *International Air Services Commission Act* (1992) 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.

3.3 The Commission has flagged with Qantas its concerns about the possible impact on competition of continuation of the code share over the longer term. For this reason, as noted above, the Commission is assessing separately the concurrent Qantas application for longer term approval of the code share arrangements. The Commission has indicated to Qantas that it will assess the airline's application for extended authorisation against the public benefit criteria in paragraph 5 of the Minister's policy statement. This process is occurring in parallel with the PNG ICCC's consideration of an Air Niugini application for authorisation for the conduct under the code share agreement between the two airlines. The two authorities will not have concluded their assessments prior to the expiry on 30 June 2007 of the current Commission approval of the code sharing.

3.4 In these circumstances, and given the short term nature of the interim extension sought, the Commission will grant Qantas authorisation to continue code sharing on the presently approved basis until 29 February 2008. This duration provides ample time to allow the broader review processes of the two Commissions to be completed. It also provides sufficient time for the airlines to make alternative operational arrangements in an orderly way, in the event that longer term authorisation of code sharing is not granted by either Commission.

4 Decision [2007] IASC 208

4.1 In accordance with Section 24 of the Act, the Commission, varies Determination [2006] IASC 129 by *adding* the following conditions:

- the capacity may be used by Qantas to provide services jointly with Air Niugini in accordance with:
  - – the code share agreements dated 11 October 2001 and 30 August 2002;
  - – or any subsequent code share agreement between Qantas and Air Niugini for operations on the Australia – PNG route with the prior approval of the Commission;

- under any code share agreement with Air Niugini:
  - Qantas must price and sell its services on the route independently of Air Niugini;
  - Qantas must not share or pool revenues on the route with Air Niugini;
- 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;

Dated: 30 May 2007

John Martin	Vanessa Fanning
Chairman	Member