

DECISION

DECISION: IASC/DEC/9817
VARIATION OF: IASC/DET/9721, 9731 & 9819
THE ROUTE: FRANCE (ROUTE 2 – FRENCH
POLYNESIA)
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 991)
PUBLIC REGISTER FILES: IASC/APP/98028

1 The application

1.1 On 23 September 1998, Qantas Airways Limited (Qantas) applied to the Commission to vary Determinations IASC/DET/9721, 9731 and 9819 (the determinations) allocating capacity on the France (Route 2 - French Polynesia) route to Qantas to enable it to code share with Lan Chile.

1.2 Qantas and Lan Chile propose to commence a code sharing arrangement with effect from 25 October 1998 under which Lan Chile will code share on Qantas operated flights between Australia and French Polynesia, an intermediate point on the primary Australia – Chile route.

1.3 The Commission published a notice inviting submissions from interested parties about the Qantas application. No submissions were received.

2 Provisions of relevant Air Services Agreements

2.1 The Australia – France Air Services Agreement of 13 April 1965 and the Memoranda of Understanding (MOU) of 6 December 1996 and 20 February 1997 provide for designated carriers to operate services in accordance with agreed capacity entitlements.

2.2 Under the 1997 MOU, the designated airlines of Australia may enter into cooperative arrangements with any airline, including third country airlines, to operate services, with a change of gauge in Papeete, between Australia and points in South America.

3 Commission's consideration

3.1 Variations to determinations are made by the Commission in accordance with the *International Air Services Commission Act 1992* (the Act) and the Minister's Policy Statement (no 3 of 23 April 1997) which was issued under section 11 of the Act.

3.2 Under section 24 of the Act, the Commission must either make a decision confirming the determination or varying the determination in a way that gives effect to the variation requested in the application.

3.3 A carrier cannot use allocated capacity by providing services jointly with any other carrier without the prior approval of the Commission. For this purpose, the Commission has previously decided that the provision of services jointly includes, *inter alia*, code-sharing, seat exchanges, block space arrangements and revenue pooling.

3.4 The Commission's task is to determine whether the determinations, as varied, would be of benefit to the public. This means that the Commission should decide whether, following the proposed variation, there would at least be the same level of public benefits as before the variation. If not, then the application should be rejected. The Commission does not see this as requiring a finding that the variations themselves result in increased benefits.

3.5 The code share proposal with Lan Chile on the French Polynesia route forms part of the arrangements between Qantas and Lan Chile to provide services on the primary route between Australia and Chile. French Polynesia is being used as an intermediate point for these services, with Qantas operating its aircraft between Australia and French Polynesia and Lan Chile operating its aircraft between French Polynesia and Chile.

3.6 Qantas has provided the Commission with a copy of the code share agreement with Lan Chile dated 16 July 1998 on a commercial-in-confidence basis. A summary of the salient points of the agreement was provided for the Commission's Register of Public Documents. The agreement is primarily for facilitating Qantas and Lan Chile services between Australia and Chile and has no specific reference to French Polynesia other than recognising it as part of the route to be served by the airlines.

3.7 The Commission has previously recognised that code share arrangements may provide some benefits on routes where the volume of passenger traffic does not permit viable independent operations. In this case, the Australia - French Polynesia market is small and may not be capable of supporting a reasonable level of end-to-end frequencies without the benefit of through traffic to/from other countries. Also, the code share proposal should allow both Qantas and Lan Chile to more effectively market French Polynesia as a stopover point on services

to/from South America. There is an adequate amount of capacity available should any other Australian carriers wish to enter the market.

3.8 In accordance with the Memorandum of Understanding between the Commission and the Australian Competition and Consumer Commission (ACCC), implemented to minimise duplication between the two bodies, the Commission sought the ACCC's view on the code share proposal.

3.9 The ACCC considered that it was unlikely that the proposed code share operations would substantially lessen competition within the meaning of the *Trade Practices Act 1974*. The ACCC noted that Lan Chile does not fly on the route in its own right and its introduction onto the route (albeit via code share) may provide a marginal increase in competition provided it prices and sells its capacity independently.

3.10 The Commission concludes that the application should be approved, subject to certain conditions referred to below.

4 Role of the ACCC

4.1 Notwithstanding the views noted at paragraph 3.9, nothing in the Commission's decision should be taken as indicating either approval or disapproval by the ACCC. The Commission's decision is made without prejudicing, in any way, possible future consideration by the ACCC of the code share agreement or operations under it.

5 Other issues

5.1 The Commission will specify in the relevant determinations that Qantas may code share with Lan Chile in accordance with the code share agreement between Qantas and Lan Chile dated 16 July 1998.

5.2 When approving joint services, the Commission normally includes conditions in determinations approving code shares that the Australian carrier must price and sell its services on the route independently and that it must not share or pool revenues. The Commission will include such conditions in the determinations.

6 Decision (IASC/DEC/9817)

6.1 In accordance with section 24 of the Act, the Commission varies Determinations IASC/DET/9721, 9731 and 9819 as requested by Qantas by:

replacing the following condition contained in each of the determinations:

- “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;”

with the following condition:

- “the capacity may be used by Qantas to provide services jointly with Lan Chile in accordance with
 - the code share agreement between Qantas and Lan Chile dated 16 July 1998 or, with the prior approval of the Commission, variations to that agreement or any new arrangements (whether or not it replaces the existing agreement) which relate to the French Polynesia route,subject to the following conditions:
 - Qantas must price and sell its services on the route independently; and
 - Qantas must not share or pool revenues;”.

Dated: 22 October 1998

Russell V Miller
Chairman

Michael L Lawriwsky
Member

Stephen Lonergan
Member