

# DECISION

<b>DETERMINATION:</b>	<b>IASC/DEC/9821</b>
<b>THE ROUTE:</b>	<b>SINGAPORE</b>
<b>THE APPLICANT:</b>	<b>QANTAS AIRWAYS LIMITED</b> <b>(ACN 009 661 901)</b>
<b>PUBLIC REGISTER FILES:</b>	<b>IASC/APP/98022</b> <b>IASC/COM/92005</b>

## 1 The application

1.1 On 9 September 1998 Qantas Airways Limited (Qantas) applied to the Commission for variations to its Determinations allocating capacity on the Singapore route to enable that capacity to be used to provide services jointly with Swissair under a code share arrangement. The relevant Determinations are IASC/DET/9609, IASC/DET/9712 and IASC/DET/9713.

1.2 The proposed reciprocal code share arrangement would enable both Qantas and Swissair to provide services between Australia and Switzerland via Singapore. Qantas would code share on 21 seats on each of three Swissair operated flights per week between Singapore and Zurich, and Swissair would code share on 35 seats on each of three Qantas operated flights per week between Singapore and Sydney. Qantas has supplied a copy of the code share agreement with Swissair dated 9 October 1998.

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 - Singapore Air Services Agreement permits code sharing, including the use of third country carriers to provide the code share services. It specifies the manner in which capacity utilised via code share operations is to be calculated for both the operating and non-operating carriers.

## 3 Legislative framework

3.1 The legislative framework for varying determinations made under the *International Air Services Commission Act 1992* (the Act) provides that carriers to whom a determination allocates capacity may, at any time, apply to the Commission, under section 21 of the Act, for the

determination to be varied. Under section 24(1), the Commission must make a decision either confirming the determination or varying the determination as requested in the application.

3.2 Under section 24(2), the Commission must not make a decision varying the determination in a way that varies, or has the effect of varying, an allocation of capacity unless the Commission is satisfied that the allocation, as so varied, would be of benefit to the public.

3.3 In exercising its powers, the Commission must take account of the objects of the Act as set out in section 3 and of the requirement of section 6(3)(b) that the Commission have regard to Australia's international obligations concerning the operation of international air services.

3.4 Section 6(3)(a) also requires the Commission to comply with policy statements made by the Minister under section 11. The current Policy Statement dated 23 April 1997 includes criteria to be applied by the Commission in assessing the benefit to the public of allocations of capacity and of variations to existing determinations.

## 4 Commission's assessment

4.1 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.

4.2 The Commission may determine whether or not an application to code share should be approved utilising the public benefit criteria contained in paragraph 5 of the Policy Statement. This is consistent with the objects set out in section 3 of the Act.

4.3 The Commission's task is to determine whether the Determination, as varied, would be of benefit to the public. As the Commission noted in IASC/DEC/9723, 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.

4.4 The code share proposal will result in a reduction in Qantas utilisation of capacity on the Singapore route amounting to 105 seats which the Commission does not consider significant in the overall context of the Singapore route where Qantas has an allocation of 41.85 B747 units. The Commission accepts that the proposal is an integral part of a code share arrangement with Swissair, the primary objective of

which is to allow Qantas to introduce services to Switzerland which the Commission considered in IASC/DET/9823 to be of benefit to the public. The Commission considers that the disbenefit associated with a minor reduction in capacity utilisation is outweighed by the benefits accruing from the extension of services to a new route.

4.5 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.

4.6 The ACCC has stated that it is unlikely that the proposed code share operations would substantially lessen competition within the meaning of the *Trade Practices Act 1974* or cause any major consumer protection problems. The code share operations with Swissair to Singapore and Switzerland should not result in a reduction in competition as no direct services currently exist. The proposal should help establish a direct service in competition with those services offered by fifth freedom carriers via points in South East Asia.

4.7 The Commission therefore concludes that it should approve the code share subject to certain conditions referred to below.

## 5 Role of the ACCC

5.1 Notwithstanding the view expressed in paragraph 4.6 above, 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.

## 6 Decision (IASC/DEC/9821)

6.1 The Commission approves the variation of Determinations IASC/DET/9609, IASC/DET/9712 and IASC/DET/9713 allocating capacity on the Australia – Singapore route to Qantas, to permit Qantas to code share with Swissair in accordance with the code share agreement between Qantas and Swissair dated 9 October 1998, subject to the following conditions:

- any variations to Schedule 1 of that agreement, in relation to the number of flights or seats, must receive the approval of the Commission prior to implementation;
- Qantas must price and sell its services on the route independently of Swissair; and
- Qantas must not share or pool revenues with Swissair.

Dated: 22 October 1998

**Russell V Miller**  
**Chairman**

**Michael L Lawriwsky**  
**Member**

**Stephen Lonergan**  
**Member**