

DETERMINATION

DETERMINATION: IASC/DET/9821
THE ROUTE: ARGENTINA
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901)
PUBLIC REGISTER FILES: IASC/APP/98017
IASC/COM/92005

1 The application

1.1 On 31 July 1998, an application was received from Qantas Airways Limited (Qantas) for an allocation of capacity between Australia and Argentina. Qantas is seeking an allocation of 792 seats per week in each direction between Australia and Argentina to enable it to introduce a twice weekly B747-400 service on the route from 20 November 1998. Qantas is also seeking approval to operate services jointly with Aerolineas Argentinas (AR).

1.2 The Commission published a notice inviting other applications for all or any part of the capacity and submissions from interested parties about the Qantas application. No applications or submissions were received.

2 Provisions of relevant Air Services Agreements

2.1 The Australia – Argentina Air Services Agreement of 13 April 1965 and the Memoranda of Understanding of 5 March 1998 provide for designated carriers to operate services in accordance with agreed capacity entitlements.

2.2 Under the MOU, the designated airlines of Australia are entitled to operate up to a total of 2,000 seats per week with immediate effect and up to a total of 2,800 seats per week from March 1999. Currently, no Australian carrier has an allocation of capacity on the route.

2.3 The MOU also entitles the designated airlines of Argentina and Australia to perform services through code sharing, blocked space and other cooperative service arrangements with any airline. When a designated airline enters into code sharing arrangements with an airline of the other contracting party, the code share seats held out for sale will not be counted against the capacity entitlements of the contracting party which designated the marketing airline.

3 Commission's assessment

3.1 Allocations of capacity 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 The Act and Policy Statement provide that if there are no competing applications or submissions, the relevant criteria for the Commission in considering an application for capacity are whether the applicant is reasonably capable of both obtaining the necessary approvals to operate on the route and implementing its proposal.

3.3 Qantas is an established international carrier which has the technical and financial resources to implement its proposal. The Commission concludes that Qantas is reasonably capable of obtaining the necessary approvals and of implementing its proposal and that the allocation to Qantas of 792 seats per week in each direction between Australia and Argentina would be of benefit to the public.

3.4 In relation to its proposed joint services with AR, the Australia – Argentina air services arrangements enable Qantas to code share on AR without any requirement for a capacity allocation from the Commission.

3.5 The position with AR code sharing on Qantas flights is different. Under subsection 15(2)(e) of the *International Air Services Commission Act 1992*, 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 joint services include, inter alia, code-sharing: See IASC/DET/9616.

3.6 The Commission will normally determine whether or not a code-sharing proposal 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.

3.7 Qantas provided the Commission with a copy of the code share agreement with Aerolineas Argentinas dated 7 September 1998 (the Codeshare Agreement) on a commercial-in-confidence basis. A summary of a draft of the agreement was provided for the Commission's Register of Public Documents.

3.8 Qantas and Aerolineas Argentinas intend to operate under a reciprocal blocked space arrangement until technical reservation system developments take place at which time they intend to move to a free sale basis. The carriers will price and sell independently and the marketing carrier will pay the operating carrier for the seats sold.

3.9 The proposed code share arrangements allow each carrier to market four services per week between Australia and Argentina as against two if there was no reciprocal arrangement.

3.10 The Commission has previously recognised that code share arrangements may provide benefits on thin routes, although by their very nature they limit the scope for

competition. As the Commission noted in IASC/DET/9508 in relation to the Australia-Canada route, where independent operations are a realistic alternative they are to be preferred.

3.11 In this case the proposal will allow Qantas to introduce services to a market on a thin and developing route. The route does not appear capable of supporting, at this time, a reasonable level of frequencies by both carriers if they were to operate independently. There is adequate capacity to allow another Australian carrier to enter the route.

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

4 Other issues

4.1 Qantas proposes to commence operating the capacity from 20 November 1998. The Commission will require Qantas to fully utilise the capacity from 20 November 1998.

4.2 The Commission will make a determination for five years from the date of the determination.

4.3 The Commission's view is that this determination should include the usual limitations on changes in the ownership and control of Qantas. These are specified below.

4.4 This Determination will also include the Commission's usual conditions concerning independently pricing and selling services, restrictions on sharing or pooling revenue and the requirement to properly notify passengers of the operating carrier.

5 Role of the ACCC

5.1 The Policy Statement and its associated Explanatory Memorandum make clear that the ACCC retains primary responsibility for competition policy matters. Nothing in the Commission's decisions should be taken as indicating either approval or disapproval by the ACCC. The Commission's decisions are made without prejudicing, in any way, possible future consideration by the ACCC of the code share agreement or operations under it.

6 Determination allocating shelf capacity on the Argentina route to Qantas (IASC/DET/9821)

6.1 The Commission finds that an allocation of capacity to Qantas on the Australia – Argentina route as sought would be of benefit to the public.

6.2 The Commission makes a determination in favour of Qantas, allocating 792 seats per week in each direction between Australia and Argentina under the Australia – Argentina Air Services Agreement.

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

6.4 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 20 November 1998 or from such other date approved by the Commission;
- only Qantas is permitted to utilise the capacity;
- the capacity may be used by Qantas to provide services jointly with Aerolineas Argentinas in accordance with:
 - the Codeshare Agreement between Qantas and Aerolineas Argentinas as extended from time to time in accordance with its terms or varied except in relation to the number of seats to be utilised by Aerolineas Argentinas on each Qantas flight;
 - variations to the Codeshare Agreement in relation to the number of seats to be utilised by Aerolineas Argentinas on each Qantas flight, subject to the prior approval of the Commission; or
 - any new joint service agreement between Qantas and Aerolineas Argentinas for operations on the Australia-Argentina route, whether or not it replaces the existing agreement, with the prior approval of the Commission;

subject to the following conditions:

- Qantas must price and sell its services on the route independently;
- Qantas must not share or pool revenues; and
- Qantas must take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight;
- changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia - Argentina Air Services Agreement being withdrawn; or
 - 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 – Argentina Air Services Agreement.

Dated: 8 September 1998

Russell V Miller
Chairman

Michael L Lawriwsky
Member

Stephen Lonergan
Member