

# DETERMINATION

**DETERMINATION:** IASC/DET/9914  
**THE ROUTE:** SINGAPORE  
**THE APPLICANT:** QANTAS AIRWAYS LIMITED  
(ACN 009 661 901)  
**PUBLIC REGISTER FILES:** IASC/APP/99030

## 1 The application

1.1 On 6 July 1999, Qantas Airways Limited (Qantas) applied for an allocation of 1,360 seats of capacity per week on the Singapore route. The allocation sought would increase Qantas' aggregate allocation on the route from 14,740 seats per week to 16,100 seats. Under the Qantas proposal 856 of the seats sought would be used operationally, effective from 31 October 1999, and 500 seats (actually 504 seats) would be used as "buffer" capacity to provide Qantas with flexibility for capacity and service adjustments.

1.2 The Commission published a notice inviting other applications for all or any part of the available capacity and submissions from interested parties about the Qantas application. None were received.

1.3 All material supplied by the applicant is filed on the Commission's Register of Public Documents.

## 2 Provisions of relevant Air Services Agreements

2.1 The air services arrangements between Australia and Singapore provide for multiple designation of Australian carriers and permit code sharing, including on services operated by third country carriers, with any capacity used under a code share to count as not less than 25% of the seats available on the aircraft used for each code share service.

2.2 The air services arrangements provide capacity entitlements of 23,200 seats per week for Australian carriers on the Singapore route. The Register of Available Capacity shows 3,473 sets per week available for allocation with immediate effect.

2.3 Current allocations on this route are 14,740 seats to Qantas and 4,667 seats to Ansett International Limited. The allocation sought by Qantas would leave 2,433 seats unallocated.

### **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 Policy Statement (No 3 of 23 April 1997, as amended on 9 March 1999) which was issued under section 11 of the Act.

3.2 Under the Policy Statement, the relevant criteria to be applied in deciding whether or not to allocate capacity, given that there is only one applicant and no submissions, is whether Qantas is reasonably capable of obtaining the necessary approvals and of implementing its proposals.

3.3 Qantas is an established international carrier which has the technical and financial resources to implement its proposal and is already operating services to Singapore. The Commission therefore concludes that Qantas is reasonably capable of obtaining the necessary approvals and of implementing its proposal.

3.4 Qantas has stated that 500 of the 1,360 seats sought would be used as “buffer” capacity, to allow some schedule changes to be implemented, such as re-instating a suspended service and to make other minor capacity variations on short notice (principally aircraft upgrades), without the need to seek amendments to allocations.

3.5 The Commission has decided that it needs to give further consideration to the request for “buffer” capacity but does not wish to delay allocation of the additional capacity which Qantas has plans to use. Accordingly this Determination deals only with 856 seats which Qantas proposes to use from 31 October 1999.

3.6 The Commission finds that there would be a public benefit in an allocation to Qantas of 856 seats per week on the Singapore route.

3.7 Section 15(2)(d) of the Act specifies that 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 has stated that the capacity would be used in a code share arrangement whereby British Airways would market capacity on Qantas operated services on the route pursuant to the Qantas/British Airways Code Share Agreement of 5 October 1997. The Commission has previously approved the operation of capacity by Qantas in joint services with British Airways under this agreement and will do so in this case, subject to its usual conditions relating to this agreement.

### **4 Other issues**

4.1 Qantas proposes to commence utilisation of the capacity from 31 October 1999. The Commission will specify that Qantas must commence utilisation of the capacity from the week commencing 31 October 1999, or from such other date approved by the Commission.

4.2 The Commission will specify that Qantas must fully utilise the capacity from 31 October 1999, or such other date approved by the Commission.

4.3 Qantas has requested a determination for five years. The Commission will make a determination for five years from the date of the determination.

4.4 The Commission proposes that this determination should include the usual limitations on changes in the ownership and control of Qantas. These are specified below.

4.5 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. However, the Trade Practices Commission (TPC) has issued an authorisation for a broad ranging joint services agreement between Qantas and British Airways. That agreement specifically provided for revenue pooling on routes including the Australia - Singapore route. Accordingly, to the extent that revenue pooling is permitted in relation to this route by an authorisation issued by the TPC, the Commission will not include such conditions in this determination. However, the Commission will be inserting conditions that such activities will not be allowed in the event that the ACCC withdraws any relevant TPC authorisation in relation to these matters.

## **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 Qantas/British Airways code share agreement or operations under it.

## **6 Determination allocating capacity on the Singapore route to Qantas (IASC/DET/9914)**

6.1 The Commission finds that an allocation of capacity to Qantas on the Singapore route would be of benefit to the public.

6.2 The Commission makes a determination in favour of Qantas, allocating 856 seats per week under the Australia – Singapore 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 commence utilising the capacity from 31 October 1999 and fully utilise it from that date or such other date approved by the Commission;
- only Qantas is permitted to utilise the capacity;
- Qantas is permitted to utilise the capacity to provide services jointly with British Airways in accordance with the code share agreement dated 5 October 1997, subject to the following conditions:
  - the number of services or number of seats the subject of the code share may be varied with the prior approval of the Commission;
  - the approval to code share with British Airways lapses if:
    - : an application for authorisation of the code share agreement under the *Trade Practices Act 1974* is made and finally rejected by the Australian Competition and Consumer Commission or the Australian Competition Tribunal, in the event of review by that Tribunal; or
    - : a final order is made revoking the authorisation of the Joint Services Agreement by the Australian Competition and Consumer Commission or Australian Competition Tribunal, in the event of review by that Tribunal; or
    - : a court makes final orders that the code share agreement is contrary to the *Trade Practices Act 1974*;
- Qantas may only price and market its services, or share or pool revenues, on the route jointly with British Airways as long as such practices are authorised under the *Trade Practices Act 1974* or otherwise authorised by the Australian Competition and Consumer Commission or Australian Competition Tribunal, in the event of review by that Tribunal;
- 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:
  - results in the designation of the airline as an Australian carrier under the Australia – Singapore 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 – Singapore Air Services Agreement.

6.5 This Determination is not to be construed as affecting any possible consideration of the code share agreement by the Australian Competition and Consumer Commission on matters which are the responsibility of that Commission.

Dated: 23 August 1999

Russell Miller  
Chairman

Michael Lawriwsky  
Member

Stephen Lonergan  
Member