



## Australian Government

### International Air Services Commission

#### DETERMINATION

**Determination:** [2010] IASC 104  
**The Route:** Italy  
**The Applicant:** Qantas Airways Limited  
(ACN 009 661 901) (Qantas)  
**Public Register File:** IASC/APP/201007

#### 1 The application

1.1 On 31 May 2010, Qantas applied for an allocation of 400 third-country code share seats per week on the Italy route. Qantas plans to use the capacity to expand its code share relationship with British Airways by code sharing on that airline's services between London and Rome, and London and Milan. The new arrangements are proposed to commence from 21 July 2010.

1.2 All public material supplied by the applicant is filed on the Register of Public Documents.

1.3 The Commission published a notice on 1 June 2010 inviting other applications for the capacity sought by Qantas. No applications were received.

#### 2 Provisions of relevant air services arrangements

2.1 The Australia - Italy air services arrangements allow the designated airlines of each country to enter into code-sharing arrangements with an airline or airlines of a third country.

2.2 The Register of Available Capacity shows that there are 400 seats per week in total in each direction available for allocation for code share services with third-country carriers. The Commission has previously allocated 600 third-country code share seats per week to Qantas.

#### 3 Delegate's assessment

3.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (the Act) and regulation 3A of the *International Air Services Commission Amendment Regulations 2003 (No.1)*, the delegate of the Commission considers the Qantas application.

3.2 Under paragraph 6.2 of the Minister's policy statement (No.5) of 19 May 2004, the Commission is required only to apply the criteria in paragraph 4 of the policy statement in this case. Under paragraph 4, the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals (4(b)(i)) and of implementing its proposals (4(b)(ii)) is of benefit to the public. Qantas is an established international carrier which is clearly capable of obtaining the necessary approvals and of

implementing its proposal. This means that there is public benefit arising from the use of the entitlements. The delegate, on behalf of the Commission, will allocate to Qantas the capacity it has sought.

3.3 Under Section 15(2)(e) of the Act, 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 stated in its application that the code share agreement between Qantas and British Airways is a free sale arrangement under which Qantas will set air fares independently of British Airways. However, Qantas subsequently clarified that it was intended that code sharing between the two carriers on the Italy route would be included within the Joint Services Agreement between Qantas and British Airways authorised by the Australian Competition and Consumer Commission.

3.4 The Commission has previously authorised code sharing by Qantas with Cathay Pacific on the Italy route. It has also authorised code sharing between Qantas and British Airways on a number of routes pursuant to the Joint Services Agreement between the two carriers. The arrangements proposed in this case do not raise competition concerns, with the amount of capacity involved – 400 seats per week - being modest in scale. The delegate will authorise the use of the capacity in joint services with British Airways but will require the signed amendments to the code share agreement to be received and approved by the Commission prior to services commencing.

#### **4 Determination allocating capacity on the Italy route to Qantas ([2010] IASC 104)**

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating 400 third-country code share seats per week in each direction on the Italy route in accordance with the Australia - Italy air services arrangements.

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

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 31 July 2010, or from such other date approved by the Commission;
- only Qantas is permitted to utilise the capacity;
- 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;
- the capacity may be used by Qantas to provide joint services with British Airways in accordance with:
  - the code share agreement dated 5 October 1997, and the amendment annex to that agreement between Qantas and British Airways for operations on the Australia – Italy route, subject to the signed

amendment annex being received and approved by the Commission prior to services commencing; or

- any new code share agreement, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the arrangements with British Airways, Qantas may price and market its services, or share or pool revenues/profits on the route, jointly with British Airways only as long as such practices are authorised under the *Trade Practices Act 1974* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal;
- 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 the 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 – Italy air services arrangements 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 – Italy air services arrangements

Dated: 8 June 2010

Michael Bird  
Executive Director  
Delegate of the IASC Commissioners