



# INTERNATIONAL AIR SERVICES COMMISSION

## DECISION

<b>DECISION:</b>	<b>[2002] IASC 203</b>
<b>VARIATION OF DETERMINATIONS ON THE FOLLOWING ROUTES:</b>	
<b>HONG KONG:</b>	<b>DET/9702, DET/9807, [2000] 106 AND [2001] 119</b>
<b>JAPAN:</b>	<b>DET/9701, DET/9804, DET/9910, [2001] 107, [2001] 112, [2001] 116 AND [2002] 104</b>
<b>SINGAPORE:</b>	<b>DET/9712, DET/9713, DET/9914, [2000] 112, [2000] 115, [2001] 102, AND [2001] 122</b>
<b>TAIWAN:</b>	<b>DET/9912</b>
<b>THE APPLICANT:</b>	<b>QANTAS AIRWAYS LIMITED (ACN 009 661 991) (QANTAS)</b>
<b>PUBLIC REGISTER:</b>	<b>IASC/APP/200201</b>

### 1 The application

1.1 On 19 December 2001, Qantas applied to the Commission to vary determinations allocating capacity to Qantas on the Japan, Hong Kong, Singapore and Taiwan routes. On the Hong Kong, Japan and Singapore route Qantas is seeking to enable some or all of the capacity to be operated by a wholly owned subsidiary, at this time, Qantas envisages that some services would be operated by Australian Airlines Ltd, (AAL) (ACN 099 625 304).

1.2 On the Taiwan route Qantas is seeking to have Qantas, Qantas Limited (ACN 003 613 465) or AAL use the capacity and to permit Qantas and Qantas Limited to code share with Eva Air.

1.3 The Commission published a notice on 10 January 2002 inviting submissions from interested parties about the application. A submission was received from Jardine Airport Services Australia (JASA), a response from Qantas and a further submission from JASA.

1.4 JASA provides ground handling services at both Melbourne International Airport and Sydney International Airport to a number of international airlines. JASA submitted that it had faced significant impediments in competing with Qantas in supplying ground handling services to other international airlines, due to code sharing and other cooperative arrangements (including joint services arrangements and domestic on-carriage) between Qantas and other airlines. JASA submitted that it is appropriate for the IASC to take action against Qantas to prevent potential anti-competitive behaviour.

1.5 Qantas responded that JASA's objection has nothing to do with the applications before the Commission nor is it supported by the *International Air Services Commission Act 1992* (the Act) or the Policy Statement. Qantas also submitted that JASA's objection relates to matters that are more properly considered by the Australian Competition and Consumer Commission (ACCC).

1.6 All non-confidential material supplied by the applicant is filed on the Register of Public Documents. Confidential material supplied by the applicant is filed on the Commission's confidential register.

## **2 Provisions of relevant air services arrangements**

2.1 The air services arrangements with Hong Kong, Japan, Singapore and Taiwan all permit multiple designation.

## **3 Commission's assessment**

3.1 The Commission notes JASA's submissions and the Qantas response. The Commission considers that in the circumstances the matters raised in the submission are matters primarily for consideration by the ACCC. The Commission understands that JASA has already referred the matters raised in its submission to the ACCC.

3.2 The Act allows for capacity to be used by a wholly owned subsidiary of another Australian carrier. Section 15(2)(ea) states that determinations may include a condition that, to the extent that any of the capacity is allocated to a particular Australian carrier, it may be used in whole or in part by any one or more of the following:

- (i) the carrier;
- (ii) a wholly-owned subsidiary of the carrier;
- (iii) if the carrier is a wholly-owned subsidiary of another Australian carrier - that other carrier;

3.3 Section 15(2A) states that if a determination includes a condition of a kind mentioned in paragraph 15(2)(ea), the determination may include conditions that are applicable to all, or some only, of the persons who are permitted to use the capacity concerned.

3.4 When considering applications to vary determinations the Commission must determine whether the determinations, as varied, would be of benefit to the public. Under paragraph 4 of the Minister's Policy Statement the use of Australian entitlements is of benefit to the public. For an established international carrier such as Qantas this means that there is public benefit arising from the use of capacity.

3.5 The variation being sought is to allow a wholly owned subsidiary to use the capacity. Paragraph 7.3 of the Minister's Policy Statement states:

“An Australian carrier seeking an allocation of capacity, or which may be permitted to use capacity allocated to an incumbent Australian carrier, will not be taken to be a new entrant if it is a subsidiary or a holding company of an incumbent Australian carrier operating on the route or if there is some other substantial connection between the two carriers in relation to ownership and control.”

3.6 The Department of Transport and Regional Services (DOTARS) has advised that AAL is reasonably capable of obtaining the necessary approvals to operate on the Hong Kong, Japan, Singapore and Taiwan routes.

3.7 In the case of determinations allocating capacity on the Hong Kong, Japan and Singapore routes, Qantas is seeking a condition to allow the capacity to be used by a wholly owned subsidiary. Any existing code share arrangements are to remain between Qantas and foreign airlines only.

3.8 In relation to passenger capacity on the Taiwan route, capacity is allocated to Qantas Limited which is a subsidiary of Qantas Airways Limited, in this case Qantas is seeking to have Qantas Limited, Qantas Airways Limited or another Australian carrier which is a wholly owned subsidiary of Qantas use the capacity.

3.9 The Commission will vary the determinations as requested.

## **4 Decision [2002] IASC 203**

4.1 In accordance with section 24 of the Act, the Commission varies Determinations IASC/DET/9807, [2000] IASC 106 and [2001] IASC 119 which allocate capacity on the Hong Kong route, as requested by Qantas, by:

*removing* the following conditions from IASC/DET/9702, IASC/DET/9807 and [2001] IASC 119:

- 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; and

*removing* the following condition from [2000] IASC 106:

- only Qantas is permitted to utilise the capacity;

*adding* the following conditions to each of the Determinations:

- only Qantas or another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity;
- neither Qantas nor another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;

4.2 In accordance with section 24 of the Act, the Commission varies Determinations IASC/DET/9701, IASC/DET/9804, IASC/DET/9910, [2001] IASC 107, [2001] IASC 112, [2001] IASC 116 and [2002] IASC 104 which allocate capacity on the Japan route and IASC/DET/9712, IASC/DET/9713, IASC/DET/9914, [2000] IASC 112, [2000] IASC 115, [2001] IASC 102, and [2001] IASC 122 which allocate capacity on the Singapore route, as requested by Qantas, by:

*removing* the following condition:

- only Qantas is permitted to utilise the capacity;

*adding* the following conditions:

- only Qantas or another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity;
- neither Qantas nor another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;

4.3 In accordance with section 24 of the Act, the Commission varies Determination IASC/DET/9912 which allocates capacity on the Taiwan route to Qantas Limited, as requested by Qantas (Qantas Airways Limited), by:

*removing* the following condition:

- only Qantas is permitted to utilise the capacity;

*adding* the following conditions:

- only Qantas Limited, Qantas Airways Limited or another Australian carrier which is a wholly owned subsidiary of Qantas Airways Limited is permitted to utilise the capacity;
- neither Qantas Limited, Qantas Airways Limited nor another Australian carrier which is a wholly owned subsidiary of Qantas Airways Limited is permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;

*replacing* Qantas with Qantas Airways Limited in the other conditions while noting that capacity remains allocated to Qantas Limited; and

Decision [2000] IASC 204 varied IASC/DET/9912 to permit code sharing between Qantas Limited and Eva Air. IASC/DET/9912 is now varied to permit Qantas Airways Limited as well as Qantas Limited to code share with Eva Air under the same conditions as Qantas Limited.

Dated: 19 March 2002

Ross Jones  
Chairman

Stephen Lonergan  
Member

Michael Lawriwsky  
Member