



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2003] IASC 120
The Route: Singapore
The Applicant: Qantas Airways Limited (Qantas) (ACN 009 661 901)
Public Register File: IASC/APP/200324

1 The application

1.1 On 17 October 2003, Qantas applied for an allocation of unlimited capacity and frequency for operation on the Australian route under the Australia - Singapore air services arrangements.

1.2 On 23 September 2003 the Australian and Singapore Governments concluded new air services arrangements which entitle Australian designated carriers to determine the capacity, frequency and aircraft type used to provide services on routes available under the arrangements. Qantas is now seeking to consolidate its existing six determinations allocating passenger capacity on the route to a single determination. Qantas sought flexibility for the capacity to be able to be used directly by Australian Airlines, a wholly owned subsidiary of Qantas, or in joint services with Qantas. Qantas also sought authority to continue to use its capacity in joint services with British Airways, Finnair, Gulf Air and Swiss International.

1.3 Qantas concurrently sought to revoke its six determinations allocating passenger capacity on the Singapore route (see separate Commission Decision [2003] IASC 214).

1.4 Qantas already has an allocation of unlimited freight capacity on the Singapore route - see Determination [2002] IASC 118. Qantas will retain this Determination, as the routes available under the new air services arrangements are more extensive for all-cargo services than for combined passenger and cargo services.

1.5 The Commission published a notice on 23 October 2003 inviting applications for capacity on the route or submissions about the Qantas application. No applications or submissions were received. All material supplied by the applicant is filed on the Register of Public Documents.

2 Provisions of relevant air services arrangements

2.1 Under the Australia – the Singapore air services arrangements Australian designated carriers may now determine the frequency, capacity and aircraft type to be operated on the routes available under the arrangements and may exercise traffic rights on these routes.

3 Commission's assessment

3.1 Under paragraph 6.2 of the Minister's policy statement, in the absence of submissions about or opposing an application, the Commission is required only to apply the criteria in paragraph 4 of the policy statement. Under paragraph 4 the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals 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 the entitlements. Therefore, the Commission concludes that an allocation to Qantas of unlimited capacity and frequency (for services other than all-cargo services) on the Singapore route would be of benefit to the public.

3.2 Section 15(2)(e) 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 may be used to code share with Australian Airlines, British Airways, Finnair, Gulf Air and Swiss International. The Commission has previously authorised these arrangements (except for Swiss International) and will continue to do so. In relation to Swiss International, the Commission will authorise the use of the capacity in joint services, provided that the code share agreement is consistent with the draft code share agreement provided by Qantas and that the Commission approves the final code share agreement.

4 Determination allocating capacity on the Singapore route to Qantas ([2003] IASC 120)

4.1 The Commission makes a determination in favour of Qantas, allocating unlimited capacity and frequency on the Singapore route for services other than all-cargo services under the Australia – Singapore 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, or another Australian carrier which is a wholly-owned subsidiary of Qantas, is required to fully utilise the capacity;
- only Qantas, or another Australian carrier which is a wholly-owned subsidiary of Qantas, is permitted to utilise the capacity;
- the capacity may be used by Australian Airlines to provide joint services with Qantas and vice versa between Australia and Singapore;
- to the extent that the capacity is used by Qantas to provide joint passenger

services with Australian Airlines or vice versa, Qantas and Australian Airlines must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking.

- the capacity may be used by Qantas to provide services jointly with British Airways in accordance with:
 - the code share agreement dated 5 October 1997; 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 only price and market its services, or share or pool revenues/profits 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 Tribunal, in the event of review by that Tribunal;
- the capacity may be used by Qantas to provide services jointly with Finnair in accordance with:
 - the code share agreement dated 30 May 2000;
 - or any subsequent code share agreement between Qantas and Finnair for operations on the Australia-Singapore route with the prior approval of the Commission; and
- under any code share agreement with Finnair:
 - Qantas must price and sell its services on the route independently of Finnair;
 - Qantas must not share or pool revenues on the route with Finnair;
- the capacity may be used by Qantas to provide services jointly with Gulf Air in accordance with:
 - the code share agreement 13 March 2002;
 - or any subsequent code share agreement between Qantas and Gulf Air for operations on the Australia-Singapore route with the prior approval of the Commission; and
- under any code share agreement with Gulf Air:
 - Qantas must price and sell its services on the route independently of Gulf Air;
 - Qantas must not share or pool revenues on the route with Gulf Air;

- the capacity may be used by Qantas to provide joint services with Swiss International in accordance with:
 - the draft code share agreement as provided to the Commission prior to the commencement of services and the finalised code share agreement which must be provided to the Commission as soon as practicable thereafter including such additional conditions (if any) as the Commission may require;
 - or any subsequent code share agreement between Qantas and Swiss International for operations on the Australia-Singapore route with the prior approval of the Commission; and
- under any code share agreement with Swiss International:
 - Qantas must price and sell its services on the route independently of Swiss International;
 - Qantas must not share or pool revenues on the route with Swiss International; and
- 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 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 Qantas, or another Australian carrier which is a wholly-owned subsidiary of Qantas, as an Australian carrier under the Australia - Singapore 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 - Singapore air services arrangements.

Dated: 31 October 2003

Michael Lawriwsky
Member Presiding

Stephen Lonergan
Member