



Australian Government

International Air Services Commission

DETERMINATION

Determination:	[2005] IASC 110
The Route:	Canada
The Applicant:	Qantas Airways Limited (Qantas) (ACN 009 661 901)
Public Register:	IASC/APP/200514

1 The application

1.1 On 6 September 2005, Qantas applied for an allocation of 1,029 seats of capacity per week on the Canada route. Qantas proposes to operate three B747-400 services per week between Sydney and Vancouver via San Francisco during the peak North American travel seasons. These peaks encompass the ski season months of December and January and the school holiday period in June. Qantas anticipates that these seasonal services will be the forerunner to the establishment of year-round services to Canada.

1.2 Qantas also proposes to code share with American Airlines on the San Francisco – Vancouver and vice versa sector. The two airlines already have a code share agreement pursuant to an existing allocation of capacity to Qantas on the Australia – United States route. That agreement will be amended to include the additional sector. Under the proposed arrangements, passenger capacity will be sold to American Airlines on a free-sale basis. American Airlines will establish its fares independently of Qantas and plans to commence selling these in the near future.

1.3 Qantas already indirectly serves seven points in Canada through code share arrangements with a number of airlines via Chicago, Los Angeles and New York. Qantas expects these arrangements to continue.

1.4 In its application, Qantas stated that it planned to commence its Vancouver services from June 2006, but subsequently advised by telephone that the start date may be deferred until August 2006. Qantas requested that the Commission require the capacity to be fully utilised from this later date.

1.5 On 12 September 2005, the Commission published a notice inviting applications from interested parties for some or all of the capacity sought by Qantas. No applications were received.

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

2 Provisions of relevant air services arrangements

2.1 Operation of the capacity involved is consistent with the provisions of the Australia - Canada air services arrangements. The Register of Available Capacity indicates that there are 3,000 seats per week available for passenger services in each direction on the Canada route.

3 Commission's consideration

3.1 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. Under paragraph 4, the use of entitlements by an Australian 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.

3.2 The Commission has previously considered applications from Qantas for allocations of capacity on a seasonal basis on the Japan route ([2004] IASC 108) and the Korea route ([2005] IASC 108). The Commission has made the allocations of capacity sought by Qantas on each of those occasions, while noting in [2005] IASC 108 that future proposals by Qantas or any other airline for use of capacity on a seasonal or other part-year basis would be considered against the circumstances applicable to the route in question.

3.3 The Commission considers that the use of capacity on a seasonal basis is less desirable from a public benefit point of view than all-year round use. On the other hand, the use of capacity on a partial basis is preferable to it not being used at all. The longer-term benefits of seasonal use would be increased where the introduction of services on this limited basis serve as a means of developing the market to support full time services in the future. Qantas has indicated that year-round services are expected to develop in this case.

3.4 The main issue for the Commission to address in seasonal-use cases is whether an allocation of capacity on a seasonal basis to one carrier might preclude the opportunity for other prospective carriers to operate a commercially viable level of services in the future. Accordingly, the adequacy of capacity available for allocation to Australian carriers is the primary factor for the Commission to consider. Related to this is the question of the likelihood of other Australian carriers seeking to enter the route. Finally, the Commission is likely to be more sympathetic to seasonal proposals which extend over longer periods of the year compared with those involving very short term operation of the capacity in situations, especially where the available capacity is relatively limited.

3.5 The Australia – Canada air traffic market is of modest size. In the year ending July 2005, about 3,700 passengers travelled by air each way each week between Australia and Canada. This compares, for example, with the Australia – United States route, on which about 16,600 passengers travelled each way each week for the same period.

3.6 Although the number of passengers travelling on the Canada route increased by about 11% in the year to July 2005 over the preceding year, this followed several years of more modest growth. There is little indication that demand growth on the route over the next several years would be so rapid as to create a situation where there was insufficient capacity available to Australian carriers, especially given the scope for Canadian and third-country carriers to contribute to meeting demand. Air Canada already operates daily services between Sydney and Vancouver via Honolulu.

3.7 Allocation of the requested capacity to Qantas would leave 1,971 seats per week available. This number of seats would be sufficient to enable the operation of probably five B747 services per week on the Canada route. This appears to be more than adequate to meet the likely requirements of any other Australian carrier which might seek to enter the route in the foreseeable future. In any case, the Commission notes that there were no other applications from prospective operators in response to the advertising of the Qantas application. The Commission considers that there is not a significant likelihood of another Australian carrier seeking to enter the Canada route in the relatively near future.

3.8 Qantas proposes using the capacity for a relatively small proportion of the year – about three months out of 12, at least initially. This falls between the six months per year use on the Japan route, and six weeks on the Korea route in the other two recent cases where the Commission has made allocations of seasonal capacity. In the Japan case there was relatively little available capacity, whereas in the Korean situation there was substantial spare capacity. The capacity availability on the Canada route again falls between these two situations.

3.9 Balancing all of the relevant factors, the Commission concludes that an allocation to Qantas of 1,029 seats per week in each direction on the Canada route for seasonal use would be of benefit to the public. The period of the determination will be five years. Qantas will be required to fully utilise the capacity from no later than 1 August 2006. Given that there are some uncertainties at this stage about the exact periods of operation, the Commission will grant Qantas some flexibility in relation to the periods within which the capacity must be fully utilised, including scope to vary these periods by resolution, should this be sought by Qantas nearer to the time of operation.

3.10 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 already has a code share agreement with American Airlines. Under the agreement, Qantas code shares on American Airlines' services between the United States and Canada while American Airlines code shares on Qantas services to New Zealand and the United States. The current proposal for American Airlines to code share on the new Qantas' services involves an extension of the code share agreement. The Commission will authorise the use of the capacity in joint services with American Airlines, subject to Qantas providing the relevant amendments to the code share agreement to the Commission before the commencement of the services.

4 Determination allocating capacity on the Canada route to Qantas ([2005] IASC 110)

4.1 The Commission makes a determination in favour of Qantas Airways Limited, allocating 1,029 seats of capacity per week in each direction on the Canada route for the periods between the beginning of the last week in November until the end of the first week in the following February; and between 1 June and 31 August; or for such other periods as approved by the Commission, during the period of the determination

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

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 1 August 2006, 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 American Airlines in accordance with:
 - the code share agreement dated 25 October 1995, as amended, with the finalised code share agreement being approved by the Commission, with such additional conditions (if any) as the Commission may require, prior to the commencement of services;
 - or any subsequent code share agreement between Qantas and American Airlines for operations on the Australia - Canada route with the prior approval of the Commission;
- under any code share agreement with American Airlines:
 - Qantas must price and sell its services on the route independently of American Airlines;

- Qantas must not share or pool revenues on the route with American Airlines.
- 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, at the time of ticket reservation, 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 - Canada 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 – Canada air services arrangements.

Dated: 26 September 2005

John Martin
Chairman

Vanessa Fanning
Member

Michael Lawriwsky
Member