

Submission to the Senate Economics Committee Inquiry

Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007

Qantas appreciates the opportunity to make this written Submission to the Committee in relation to its Inquiry into the Bill. We note that Submissions must only address the provisions of the Bill.

Background

The Qantas Sale Act was passed in 1992 to “put in place the necessary legislative and administrative framework for the sale of Qantas Airways Limited by the Commonwealth”¹. Part 3 of the Act contains certain requirements regarding Qantas’ Constitution (then Articles of Association). The Explanatory Memorandum outlines the purpose of Part 3²:

22. The purpose of Part 3 is to require that the articles of association of Qantas contain certain restrictions or requirements, predominantly related to maintaining the Australian identity of Qantas and ensuring that the requirements of Australia’s bilateral air service agreements (under which most of Qantas’ international air services are operated) are complied with. These air service agreements require that Qantas remains substantially owned and effectively controlled by Australians. The part also provides a mechanism for the relevant portfolio Minister (currently the Minister for Transport and Communications) to monitor compliance with these provisions and, if necessary, to seek their enforcement by the Federal Court.

Part 3, in sections 7(1)(a)-(k), requires that certain requirements be included in the Constitution of Qantas Airways Limited.

At the time the Act was passed, it was open to Parliament to impose these requirements on Qantas Airways Limited and its subsidiaries. The Act includes a definition “Qantas subsidiary” which is used in those parts of the Act which Parliament intended to apply to Qantas and its subsidiaries. It was a conscious decision not to apply Part 3 to Qantas subsidiaries as this would have affected the operation of Australia Asia Airlines Limited which was the Qantas subsidiary operating international services in 1992 between Australia and Taiwan. The intention of Parliament is clear from the Second Reading Speech in the Senate on 7 December 1992 in which Senator MacGibbon made the following statement³:

Part 3 deals with the requirement for the airline to trade under the name of Qantas when operating international services. I did raise the matter of Australia Asia Airlines with the advisers and I am assured that that will not be in any conflict with the provisions of the Act. Australia Asia Airlines is the subcompany set up by Qantas to trade with Taiwan.

While the above deals with the requirement that Qantas Airways Limited operate scheduled international services under the name “Qantas”, it clearly enunciated that the Government did not intend Part 3 to apply to subsidiaries.

Notwithstanding the above, while Qantas has no objection, in principle, to the intention of the Bill, it is just not required. Qantas did not establish Jetstar with the intention of circumventing the provisions of the Qantas Sale Act.

Jetstar

Jetstar was established in 2004 as a wholly owned, Australian incorporated subsidiary to operate airline services predominantly to leisure destinations offering a value based service. It was an integral part of the Qantas Group growth strategy to drive expansion by better aligning service offerings with market demand.

¹ Qantas Sale Bill 1992 – Explanatory Memorandum – Page 1

² Page 13

³ Hansard 7 December 1992 – Page 4267



Jetstar is a separate legal entity, operating under its own Air Operator's Certificate with an independent executive and operational management. Jetstar's head office is in Melbourne and its Chief Executive Officer is Alan Joyce.

Jetstar has grown its operations to 23 A320 aircraft operating to 21 destinations in Australia and New Zealand. Its success in the Australian market has enabled the model to be extended and adapted to operate on other international routes. This will enable the Qantas Group to expand its network to destinations which were not viable (or were only marginally viable) when operated by full service Qantas aircraft. To this end, in November 2006, Jetstar commenced long-haul international operations utilising A330 aircraft.

Jetstar has been designated by the Australian Government to operate international services utilising Australian air service rights. Jetstar (like any other designated Australian airline) must comply with the provisions of the Air Navigation Act which, inter alia, require Jetstar to be 51% Australian owned⁴.

The vast bulk of Jetstar's facilities to support its operations are and will continue to be based in Australia.

Jetstar currently employs more than 1,600 people, with the overwhelming majority based in Australia. Earlier this month, a new \$29 million A320 maintenance facility was opened at Newcastle – an investment that will create additional skilled jobs and apprenticeship opportunities.

In addition, Jetstar's long haul expansion will see the workforce grow further with the introduction of its widebody long-haul international fleet.

It is important to the success of both Qantas and Jetstar that they continue to work closely to maximise the Group's financial performance and market shares. To this end, Qantas and Jetstar are codesharing on each other's international services to leverage brand and distribution systems and optimise market penetration. The airlines operate on distinct routes to avoid "cannibalisation" of yields.

The concerns expressed by Senator Fielding in the Second Reading Speech of "Jetstar being sold off to overseas buyers" are unfounded and run counter to the Qantas Group's strategy of retaining and growing the complementary Qantas and Jetstar businesses. The prospect of the highly successful Jetstar lower cost operating model competing directly with Qantas in Australian domestic and international markets would clearly be an outcome that any owner of Qantas would be highly unlikely to pursue.

In addition, the provisions of the Air Navigation Act with respect to ownership ensure that the sale of Jetstar to foreign owners cannot occur.

The Bill

There is no "loophole" that needs to be closed by the Bill. Jetstar, as an Australian designated airline, must meet the requirements of the Air Navigation Act as outlined above.

In addition, to be designated as an Australian carrier, Australia's international Air Services Agreements either require Jetstar to be "substantially owned and effectively controlled" by Australians or to be "incorporated and have its principal place of business" in Australia or a combination of these criteria. Jetstar (like Qantas and Virgin Blue) must continue to meet these requirements to be designated (by Australia) and accepted (by other countries) as an Australian carrier.

These requirements ensure that, in order for Jetstar to access the full complement of Australia's international Air Services Agreements, it must maintain its head office in Australia and must be able to clearly demonstrate that it is effectively controlled by Australians. This would require it to have (as an absolute minimum) a majority of Australian directors and, we believe, an Australian chairman.

No additional requirements are imposed on the other Australian designated international carrier, Virgin Blue, or are likely to be imposed on any new entrant who may become an Australian designated international carrier. It is not appropriate to impose on Jetstar (and Qantas' other associated entities) conditions which are not imposed on its competitors and were, at the enactment of the Qantas Sale Act, only intended to apply to Qantas.

⁴ Air Navigation Act – Section 11A



Facilities

Section 7(1)(h) of the Qantas Sale Act:

require that of the facilities, taken in aggregate, which are used by Qantas in the provision of scheduled international air transport services (for example, facilities for the maintenance and housing of aircraft, catering, flight operations, training and administration), the facilities located in Australia, when compared with those located in any other country, must represent the principal operational centre for Qantas

It is unclear whether, under the proposed amendment to section 9(5)(b) of the Act, the facilities operated in the provision of scheduled international air transport services are to be aggregated across the Qantas Group or whether each of Qantas and its associated entities are to be considered separately.

Qantas does not consider it is appropriate to apply a “by subsidiary” test to this requirement as to do so runs the risk of distorting the intent of Parliament – that the principal operating base of Qantas be in Australia. If it is not considered appropriate to apply the law as previously passed by Parliament, the appropriate way to view this requirement is on a Qantas Group basis – that is that Australia be the principal operating base when considered across the consolidated Qantas Group (including Qantas and Jetstar). This permits maximum flexibility in how services are provided to consumers while ensuring that the intent of Parliament that the principal operating base of Qantas (in this case the Qantas Group) be in Australia.

This is clearly how the current Government interprets this obligation, as evidenced by clause 5.1(h) of the Deed of Undertaking provided to the Treasurer and Minister for Transport and Regional Services by Airline Partners Australia on 6 March 2007.

Drafting Issues

The Bill as drafted purports to apply to “Qantas and each associated entity”. The Bill provides that whether an entity is an associate of Qantas is to be determined in the same manner as the question is determined in the Corporations Act.

Section 50AAA of the Corporations Act defines when one entity is an associate of another entity. Without going into detail, the current drafting, if enacted, runs the real risk of forcing Qantas to materially change its current operations. For example, Qantas has a wholly-owned New Zealand incorporated subsidiary, Jetconnect Limited, which operates scheduled international air transport services as it operates B737 services on the Tasman (and in domestic NZ) on behalf of Qantas. The Bill, if enacted, would require Qantas to cease this operation.

Qantas also has a 46.3% interest in Air Pacific Limited (Fiji’s national carrier) and a 45% shareholding in Orangestar (a Singapore company with two low-cost subsidiary airlines, Jetstar Asia and Valuair) which may be associates. If these companies are associates of Qantas, the current drafting would force Qantas to dispose of these shareholdings.

Qantas is sure that this is not the intent of the legislation.

Hearing

Qantas would be happy to answer any questions the Committee may have at its public hearings on 13 March 2007.

Qantas Airways Limited
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