



29 October 2012

Ms Marlene Tucker
A/g Executive Director
International Air Services Commission
GPO Box 630
Canberra ACT 2601

Dear Ms Tucker

Application for Renewal - Italy Route

Qantas submits the following information further to our submissions of 5 and 23 October in relation to the above matter and Virgin Australia's response of 24 October.

In considering this matter, Qantas has taken into account the relevant sections of the *International Air Services Commission Act 1992* (the Act) and the International Air Services Policy Statement dated 19 May 2004 (Policy Statement), applicable today and in June 2001, in their entirety.

It would seem clear that a pre-requisite of a decision by the International Air Services Commission (Commission) to allocate capacity to an initial new entrant under the paragraph 7 criteria of the Policy Statement is the capacity in question must be sufficient to develop "efficient and commercially sustainable operations".

Considering the actions of both Ansett International (Ansett) and the Commission in respect of this matter there is no evidence to suggest that Ansett's application for and subsequent allocation of 75 seats per week on the Italy route did not satisfy fully the paragraph 7 criteria.

Ansett's request was for a specific amount of capacity, based on the number of Singapore Airlines' frequencies per week on which it proposed to code share, and was entirely a commercial decision made independently by an Australian carrier. In issuing Determination [2001] IASC 109 to Ansett, the Commission confirmed the level of capacity was commercially sustainable and the allocation criteria applicable to the start-up phase had been satisfied. That is, that the "*level of capacity available and in prospect is sufficient to support a level of services necessary to permit the development of efficient, commercially sustainable operations by both a new entrant and an incumbent Australian carrier*" as set out in the International Air Services Policy Statement dated 23 April 1997.



Qantas Airways Limited ABN 16 009 661 901
Qantas Centre 203 Coward Street Mascot NSW 2020 Australia
Telephone 61 (2) 9691 3636

qantas.com

Virgin Australia suggests that as Ansett was unable to implement the capacity allocated by Determination [2001] IASC 109 on the Italy route it cannot be determined whether the allocation was a “commercially sustainable level of capacity”. It is not clear to us what is intended by this suggestion. In the circumstances of a paragraph 7 assessment and by its very nature a decision as to whether a proposal is based on a “commercially sustainable level of capacity” can only be made before capacity is operated; not afterwards as Virgin Australia seems to be suggesting.

For sound policy reasons concerning investment certainty, there is simply no provision for ex post facto review of “start-up” capacity. There is no reference or provision in either the Act or Policy Statement, or the versions applicable in June 2001, which allow for the retrospective assessment and re-instatement of the start-up phase on a route after the allocation of capacity. If the Commission was able to re-consider whether an allocation of capacity was commercially sustainable, it would potentially allow for the reestablishment of the start-up phase on a route. Given the potential significance for long term investment decisions of incumbent carriers, the ability to do so would be clearly provided for in the legislative framework.

The absence of a reference to code share operations in the International Air Services Policy Statement of April 1994 is put forward by Virgin Australia as evidence that the start-up phase did not apply to code share services before 2004. The existence or absence of a reference to code share is not relevant as an allocation of capacity, regardless of its form, has taken place, which in itself confirms the start-up phase no longer applies.

We would be pleased to provide any further information the Commission may require.

Yours sincerely



Tony Wheelens
Executive Manager
Government and International Relations