

DECISION

VARIATION OF DETERMINATION IASC/DET/9607 ALLOCATING CAPACITY ON THE INDONESIA ROUTE TO QANTAS AIRWAYS LIMITED (ACN 009 661 901)

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Date: 13 May 1997

Members:

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Chairman

Brian L Johns
Member

Russell V Miller
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1. The application

1.1. Qantas Airways Limited ACN 009 661 901 (Qantas) applied to the Commission on 21 March 1997 for a variation of Determination IASC/DET/9607 allocating capacity on the Australia-Indonesia route to Qantas.

1.2. Qantas is seeking a variation to increase the capacity allocated to it in Determination IASC/DET/9607 from 1.8 B747 equivalent units to 1.95 B747 equivalent units of capacity per week. If granted, this would increase Qantas' total capacity allocation on the Indonesia route to 15.55 B747 equivalent units per week.

1.3. Qantas received timetable approval from the Department of Transport and Regional Development (DoTRD) to operate 15.55 B747 equivalent units of capacity on the Indonesia route from 30 March 1997, on the basis that the additional 0.15 B747 units of capacity was derived from the Australia-Indonesia "overrun" capacity arrangements (see section 3). Consequently, Qantas could fully utilise the additional 0.15 B747 equivalent units of capacity immediately should the Commission approve the application.

1.4. On 4 April 1997 the Commission published a notice inviting submissions from any interested persons about the Qantas application, and other applications for an allocation of all or part of the available capacity on the Indonesia route. The closing date for submissions and other applications was 18 April 1997. No submissions were received. One other application, from Capiteq Ltd ACN 008 137 559 trading as Airnorth Regional (Airnorth), was received.

1.5. Airnorth has indicated that it wishes to commence services in late May or June 1997 and ultimately utilise aircraft with a maximum of 28 seats with two services per week between Darwin and Ambon. Sufficient shelf capacity is available for both the Qantas and Airnorth applications. The Commission has therefore decided to consider the Qantas and Airnorth applications independently.

1.6. All non-confidential material supplied by the applicant is filed on the Register of Public Documents.

2. Current services to Indonesia

2.1. Qantas currently operates a total of 26 services per week between Australia and Indonesia utilising 15.55 B747 equivalent units of capacity. Of these 26 services, 10 are operated beyond Indonesia to Singapore, two are operated beyond Indonesia to Kuala Lumpur and the remaining 14 services terminate in Indonesia. Details of Qantas' current operations between Australia and Indonesia are provided at Attachment A.

2.2. Other carriers providing services on the route are Garuda, Ansett International, Sempati and Merpati.

3. Provisions of relevant Air Services Agreements

3.1. The Memorandum Of Understanding (MOU) between Australia and Indonesia of 9 May 1996 and the Air Services Agreement (ASA) of 9 March 1969, provide for the operation of international air services and multiple designation of Australian carriers.

3.2. Current capacity entitlements for Australian carriers under the MOU are 25 B747 equivalent units of capacity per week. The Commission has allocated Qantas 15.4 B747 equivalent units of capacity per week, Ansett 8.4 B747 equivalent units of capacity per week and National Jet Systems 0.4 B747 equivalent units of capacity per week. The Register of Available Capacity provides passenger capacity of 0.8 B747 equivalent units available immediately, and an additional 1.85 B747 equivalent units of capacity from October 1997.

3.3. The MOU also specifies that in the event that the airlines of one Contracting Party wish to operate capacity which would result in the total capacity available for all airlines of that Contracting Party being exceeded by an amount of 0.3 B747 equivalents or less, the aeronautical authorities of both countries may approve such minor variation.

3.4. Under the MOU Australian carriers are entitled to exercise full traffic rights between Indonesia and Singapore, Malaysia or Thailand provided that they do not operate more than 17 frequencies per week or more than 10.6 B747 equivalent units of capacity per week. Relevant air services agreements with Singapore and Malaysia permit Australian carriers to operate via points in Indonesia with full traffic rights subject to certain limitations not relevant to this determination.

4. Applicant's claims

4.1. Qantas is seeking a variation of Determination IASC/DET/9607 to enable it to utilise an additional 0.15 B747 equivalent units of capacity. The additional capacity is required because Qantas is presently operating 15.55 B747 equivalent units of capacity, utilising 0.15 B747 equivalent units of capacity approved by DoTRD from the Australia-Indonesia “overrun” capacity arrangements.

4.2. Qantas claims that the current schedule pattern provides a regular daily service on the Sydney-Jakarta-Singapore route using B747-SP aircraft, enabling an enhanced standard of service to be offered to the public, particularly to business class passengers.

4.3. Qantas also argues that the total spread of Qantas services between five Australian gateways and Indonesia makes excellent use of Australian bilateral entitlements.

5. Legislative framework

5.1. The legislative framework for varying determinations made under the *International Air Services Commission Act 1992* is set out in Attachment B.

5.2. Carriers to whom a determination allocates capacity may, at any time, apply to the Commission, under section 21 of the Act, for the determination to be varied. Under section 24(1), the Commission must make a decision either confirming the determination or varying the determination as requested in the application.

5.3. Under section 24(2), the Commission must not make a decision varying the determination in a way that varies, or has the effect of varying, an allocation of capacity unless the Commission is satisfied that the allocation, as so varied, would be of benefit to the public.

5.4. In exercising its powers, the Commission must take account of the objects of the Act as set out in section 3 and of the requirement of section 6(3)(b) that the Commission have regard to Australia's international obligations concerning the operation of international air services.

5.5. Section 6(3)(a) also requires the Commission to comply with policy statements made by the Minister under section 11. The current Policy Statement, dated 23 April 1997, includes criteria to be applied by the Commission in assessing the benefit to the public of allocations of capacity.

6. Commission's assessment

6.1. Under the Policy Statement, the only relevant criteria to be applied in assessing benefit to the public, in this case, is whether Qantas is reasonably capable of obtaining the necessary approvals and of implementing its proposals.

6.2. Qantas is a major international carrier and is already operating a substantial number of services to Indonesia. Qantas has the approvals required to operate on the Indonesia route and has already obtained approval for its current timetable.

6.3. The Commission concludes that Qantas is reasonably capable of obtaining the approvals necessary to operate the route, of implementing its proposal and that the variation requested would be of benefit to the public. The Commission will grant Qantas the variation it has requested.

7. Commission Decision IASC/DEC/9713

7.1. The Commission finds that a variation of Determination IASC/DET/9607 as requested by Qantas would be of benefit to the public. It varies Determination IASC/DET/9607 by replacing paragraph 9.1 with the following:

“9.1 The Commission makes a determination in favour of Qantas, allocating 1.95 B747 equivalent units of capacity per week in each direction between Australia and Indonesia.”

Dated 13 May 1997

James K Bain
Chairman

Brian L Johns
Member

Russell V Miller
Member

A. Qantas' current services to Indonesia

Frequency	Aircraft	B747 Units of Capacity	Route
7	B747-SP	5.25	SYD-JKT-SIN v.v.
2	B767-300	1.1	BNE-JKT-KUL ¹ v.v.
2	B767-300	1.1	MEL- JKT v.v.
3	B767-300	1.65	MEL-DPS-SIN v.v.
2	B747	2.0	SYD- DPS v.v.
3	B767-300	1.65	PER-JKT v.v.
2	B767-300	1.1	PER-DPS v.v.
1	B767-200	0.5	PER-DPS v.v.
4	B737	1.2	DRW-DPS v.v.
Total 26		15.55	

Notes:

1 No fifth freedom rights exercised by Qantas between Jakarta and Kuala Lumpur

B. Legislative framework

1. Under section 21 of the *International Air Services Commission Act 1992* (the Act) an Australian carrier to whom a determination allocates capacity may at any time apply to the Commission for the determination to be varied.
2. Section 10(2) of the Act requires the Commission to conduct a review of a determination if the Australian carrier to whom the determination allocates capacity applies to the Commission under section 21 for the determination to be varied. Before conducting a review under section 10 the Commission must, by notice, invite submissions about the review of the determination (subsection 22(1)).
3. Section 24 of the Act relates to decisions on applications for variations. Under subsection 24(1), subject to this section, the Commission must, having conducted a review to decide an application for a determination to be varied, make a decision:
 - (a) confirming the determination; or
 - (b) varying the determination in a way that gives effect to the variation requested in the application.
4. Section 24(2) of the Act states the Commission must not make a decision varying the determination in a way that varies, or has effect of varying, an allocation of capacity if the Commission is satisfied that the allocation, as so varied, would not be of benefit to the public.
5. In exercising its powers, the Commission must take account of the objects of the Act as set out in section 3 and of the requirement of section 6(3)(b) that the Commission have regard to Australia's international obligations concerning the operation of international air services.
6. Section 6(3)(a) also requires the Commission to comply with policy statements made by the Minister under section 11.
7. The section 11 Policy Statement dated 13 April 1997, includes criteria to be applied by the Commission in assessing the benefit to the public of allocations of capacity.
8. Subject to section 6, section 4 relates to general criteria for assessing benefit to the public. In particular:

Use of Australian carrier entitlements

 - (a) Subject to (b), the use of the entitlements of Australian carriers under a bilateral arrangement is of benefit to the public.

Carrier capabilities

(b) It is not of benefit to the public for the commission to allocate capacity to Australian carriers unless such carriers:

(i) are reasonably capable of obtaining the necessary approvals to operate on the route; and

(ii) are reasonably capable of implementing their proposals.

9. Section 6.3 requires the Commission to assess the benefit to the public in circumstances where a carrier requests a variation of a determination to allow it flexibility in operating its capacity, including changes in seating or freight carrying arrangements or configurations, aircraft type or points to be served, which may result in a minor increase in capacity. The Commission need only satisfy itself that the proposed variation does not adversely affect the application of the criteria in section 4.