

DETERMINATION

RENEWAL OF DETERMINATIONS A-12 AND B-6 ALLOCATING CAPACITY ON THE PAPUA NEW GUINEA ROUTE TO QANTAS AIRWAYS LIMITED (ACN 009 661 901)

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1. The Determinations subject to renewal

1.1. On 22 July 1992, the Minister issued Determinations A-12 and B-6 (the determinations) which allocated capacity to Papua New Guinea (PNG) to Qantas Airways Limited ACN 009 661 901 (Qantas).

1.2. Determination A-12 allocated the equivalent of 1.8 B747 services weekly between South East Australia and Port Moresby and 1.05 B747 services weekly between Cairns and Port Moresby. Determination B-6, initially an interim determination for a period of three years, allocated the equivalent of 0.4 B747 services weekly between Cairns and Mount Hagen and 0.5 B747 services weekly between Mount Hagen and Cairns. Determination B-6 was subsequently renewed as a five year determination effective from 1 July 1992.

1.3. The determinations, issued under section 54 of the *International Air Services Commission Act 1992* (the Act) and effective from 1 July 1992, expire on 30 June 1997.

2. The application

2.1. The Act requires the Commission to commence its consideration of the renewal of a determination at least 12 months before that determination is due to expire. In accordance with its procedures, on 20 May 1996, the Commission invited Qantas to express its interest (or otherwise) in renewing the determinations. On 24 May 1996, Qantas wrote to the Commission seeking a renewal of the determinations.

2.2. On 21 June 1996, the Commission published a notice inviting submissions from any interested person about the renewal of the determinations, and other applications for an allocation of all or part of the capacity that is subject to renewal. The closing date for submissions and other applications was 19 July 1996. Qantas was the only applicant and no other submissions were received.

2.3. All non-confidential material supplied by the applicant is filed on the Register of Public Documents. Confidential material supplied by the applicant is filed on the Commission's confidential register.

3. Qantas services to Papua New Guinea

3.1. Currently, Qantas operates the following services between Australia and Papua New Guinea:

- Sydney - Brisbane - Port Moresby & v.v. (three B767-300 services per week);
- Cairns - Port Moresby (three F28 services per week);
- Port Moresby - Cairns (four F28 services per week); and
- Cairns - Port Moresby & v.v. (two A310 services per week).

3.2. The A310 services between Cairns and Port Moresby are jointly operated with Air Niugini with capacity shared equally under an arrangement contained in a Qantas/Air Niugini Capacity Purchase/Sale Agreement dated 23 October 1987, a copy of which has been supplied on a confidential basis to the Commission. Under this agreement Qantas purchases half of the capacity on the Air Niugini operated A310 services. The F28 aircraft are also operated by Air Niugini but Qantas purchases all the available capacity on these services. On 31 December 1996, Qantas ceased its joint services with Air Niugini between Cairns and Mount Hagen.

3.3. The current operations result in Qantas exercising a total of 2.9 B747 units of capacity per week in a northbound direction and a total of 3.1 B747 units of capacity per week in a southbound direction.

3.4. On 16 May 1997, Qantas advised the Commission that it intended to increase its capacity utilisation on the route with effect from the Northern Winter 1997/98 timetable period. From 26 October 1997, Qantas' services are to be operated as follows:

- Sydney - Brisbane - Port Moresby & v.v (three B767-300 services per week);
- Cairns - Port Moresby (two F28 services per week);
- Port Moresby - Cairns (three F28 services per week); and
- Cairns - Port Moresby & v.v. (four A310 services per week).

3.5. The A310 services between Cairns and Port Moresby would continue to be operated jointly with Air Niugini in a similar manner to the current A310 services.

3.6. These operations have resulted in Qantas requesting that it be allocated a total of 3.2 B747 units of capacity per week in a northbound direction, 0.05 of a B747 less than its current allocation. In a southbound direction, Qantas will require a total of 3.4 B747 units of capacity per week, 0.05 of a B747 more than its current allocation. Qantas has advised that it will forward a separate application to the Commission to amend its southbound capacity allocation at a later date.

3.7. In the context of this application for renewal Qantas has provided the Commission with information concerning its operations on the route including the cities served, any operational or regulatory problems encountered, of which according to Qantas there were none, and current published fares.

4. Provisions of relevant Air Services Agreements

4.1. The Memorandum of Understanding (MOU) of 23 October 1996 and the Australia - Papua New Guinea Air Services Agreement (ASA) of 8 December 1980 provide for the operation of international air services and designation of multiple Australian carriers. The air services arrangements also provide for the operation of joint services between designated airlines.

4.2. At the time of issuing the determinations, the capacity entitlements were specific to particular city pairs. A fresh determination will need to reflect the current air

services arrangements which allow for separate capacity entitlements on the following routes:

- between South East Australia and PNG; and
- between Northern Australia and PNG (defined in the MOU as points north of Brisbane but not including Brisbane)

4.3. On the South East Australia - PNG route, Qantas is currently allocated 1.8 B747 units of capacity per week. On the Northern Australia - PNG route, Qantas is currently allocated 1.45 B747 units of capacity per week northbound and 1.55 B747 units of capacity per week southbound.

5. Legislative framework

5.1. The renewal of a determination is made in accordance with the *International Air Services Commission Act 1992*. The legislative framework for considering a renewal of a determination under the Act is set out in Attachment A.

5.2. Under section 11 of the Act, the Minister may make Policy Statements setting out matters relevant to the Commission's performance of its functions. The current Policy Statement (No.3) was issued by the Minister on 23 April 1997 and includes criteria to be applied by the Commission in considering the renewal of a determination.

5.3. The criteria applicable to assessing the renewal of a determination in circumstances where:

- the incumbent carrier is seeking renewal of a determination;
- the capacity is limited under a bilateral arrangement;
- the route is in the start-up phase; and
- there are no other applications for the capacity subject to renewal,

are those set out in Attachment B. Those criteria apply to this application.

6. Commission's consideration of the renewal of the determinations

6.1. Under the Policy Statement, there is a rebuttable presumption in favour of the carrier seeking the renewal, except where paragraph 8.1(a) applies.

6.2. Although the route is in the start-up phase, the start-up phase allocation criteria set out in paragraph 8.1(a) are not applicable because Qantas is the only applicant.

6.3. The criteria for assessing benefit to the public where the rebuttable presumption in favour of the carrier seeking renewal applies are specified in paragraph 8.2 of the Policy Statement which states that the Commission should allocate the

capacity to the carrier seeking renewal unless the Commission is satisfied that both of the following criteria are met:

- (a) the carrier seeking renewal has failed to service the route effectively; and
- (b) the use of the capacity in whole or in part by another Australian carrier which has applied for that capacity would better service the public having regard to the criteria set in paragraphs 4 and 5 of the Policy Statement.

6.4. The capacity which Qantas is seeking in this renewal application is:

Between South East Australia and PNG:

- 1.8 B747 units per week in each direction.

Between Northern Australia and PNG:

- 1.4 B747 units per week (northbound); and
- 1.55 B747 units per week (southbound).

6.5. The Commission notes that this leaves 0.05 B747 units per week northbound between Northern Australia and PNG which will become shelf capacity.

6.6. There have been no submissions suggesting that Qantas has not serviced the route effectively. In the light of this and the operational information supplied, the Commission has no reason to conclude that Qantas has not serviced the route effectively. In any event there is no application by another Australian carrier.

6.7. Accordingly, the Commission concludes that the renewal of Determinations A-12 and B-6 on the Australia - PNG route to Qantas would be of benefit to the public. In doing so the Commission reduces the allocated capacity by the 0.05 B747 units per week mentioned in paragraph 6.5.

7. Other issues

Terms and conditions of the fresh determination

7.1. Under section 19(3) of the Act, the Commission may make such changes (if any) to the terms and conditions included in the original determination as it is satisfied are warranted because of changes in circumstances since the original determinations were made.

7.2. Since the original section 54 Determinations were made the Commission has had an opportunity to refine the terms and conditions which should apply to its determinations. In these circumstances the Commission believes that fresh determinations which renew original determinations should contain terms and

conditions which are consistent with those applying to determinations currently issued by the Commission. These are set out in the fresh determination.

Period of the fresh determination

7.3. The Commission will grant Qantas a fresh determination for a period of 5 years effective from 1 July 1997.

Utilisation of the capacity

7.4. The Commission will specify that Qantas be required to commence utilisation of the capacity from 1 July 1997 and to fully utilise all of the capacity from 26 October 1997.

7.5. The Commission will specify that:

- the capacity is only to be used by Qantas; and
- Qantas may utilise the capacity to provide services jointly with Air Niugini subject to the limitations specified in this fresh determination.

Ownership and control of the carrier

7.6. The Commission's view is that the fresh determination should include the usual limitations on changes in the ownership and control of Qantas. These are specified below.

8. Determination for renewal of Determinations A-12 and B-6 allocating capacity on the Papua New Guinea route to Qantas (IASC/DET/9724)

8.1. The Commission finds a renewal of Determinations A-12 and B-6 allocating capacity on the Australia - Papua New Guinea route to Qantas would be of benefit to the public.

8.2. The Commission makes a fresh determination in favour of Qantas, allocating the following capacity between Australia and Papua New Guinea under the Australia - Papua New Guinea Air Services Agreement:

- the equivalent of 1.8 B747 units per week in each direction on Route I(a) being between South East Australia and Papua New Guinea;
- the equivalent of 1.4 B747 units per week northbound on Route I(b) being between Northern Australia and Papua New Guinea; and

- the equivalent of 1.55 B747 units per week southbound on Route I(b) being between Papua New Guinea and Northern Australia.

8.3. The determination is for 5 years from 1 July 1997.

8.4. The determination is subject to the following conditions:

- Qantas is required to commence utilisation of the allocated capacity from 1 July 1997;
- Qantas is required to fully utilise the allocated capacity from 26 October 1997;
- only Qantas is permitted to utilise the capacity;
- Qantas may use the capacity to provide services jointly with Air Niugini in accordance with:
 - the Capacity Purchase/Sale Agreement between Qantas and Air Niugini for the Cairns - Port Moresby route made on 23 October 1987 as extended from time to time in accordance with its terms; or
 - variations to the agreement, subject to the prior approval of the Commission; or
 - any new joint service arrangement between Qantas and Air Niugini for operations on the Australia - Papua New Guinea route whether or not it replaces the existing Agreement, with the prior approval of the Commission;

and in any case, in accordance with this determination,

- to the extent that the capacity is used to provide services jointly with Air Niugini:
 - Qantas must price and sell its services on the routes independently;
 - Qantas must not pool revenues with Air Niugini;
 - Qantas must take all reasonable steps to ensure passengers are informed, at the time of ticket reservation, of the carrier 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 - Papua New Guinea Air Services Agreement 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 - Papua New Guinea Air Services Agreement.

Dated: 6 June 1997

Brian L Johns
Member

Russell V Miller
Member

A. Legislative framework

1. Under subsection 17(1) of the Act, the Commission must start its consideration of the renewal of a determination at least 12 months before the end of the period during which the determination is in force.
2. Under subsection 17(2) of the Act, before starting its consideration, the Commission must, by notice, invite submissions about the renewal.
3. Under subsection 17(3), any person may make submissions to the Commission about the renewal.
4. Under subsection 8(1), the Commission may, at any time while a determination is in force, make a fresh determination allocating capacity to which the original determination relates.
5. Under subsection 8(2), the fresh determination:
 - (a) must make the same allocation of capacity as the original determination unless:
 - (i) the Commission is satisfied that that allocation is no longer of benefit to the public; or
 - (ii) the original determination is an interim determination; and
 - (b) comes into force immediately after the end of the period during which the original determination was in force.
6. Under subsection 8(3), if the fresh determination does not make the same allocation of capacity as the original determination, it must not make a different allocation of capacity unless the Commission is satisfied that that allocation would be of benefit to the public.
7. In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the Policy Statement dated 27 March 1995 made under section 11 of the Act. The criteria applicable to assessing benefit to the public for the purposes of renewal of determinations are those contained in paragraph 8 of the Policy Statement.
8. Subsection 19(1) of the Act relates to the contents of determinations made under section 8 of the Act. Subsection 19(2) specifies the period during which the determination is to be in force.

9. Under subsection 19(3), in including terms and conditions in the determination, the Commission may make such changes (if any) to the terms and conditions included in the original determination (including adding or deleting terms and conditions) as it is satisfied are warranted because of changes in circumstances since the original determination was made.
10. Section 20 relates to notifications of determinations.

B. Relevant criteria under paragraphs 6 and 8 of the Policy Statement

Paragraph 6.1 requirements

6. CRITERIA APPLICABLE IN PARTICULAR CIRCUMSTANCES

Capacity not limited

6.1 In circumstances where capacity is not limited under a bilateral arrangement, only the criteria in paragraph 4 are applicable.

Paragraph 8 requirements

8. RENEWAL OF DETERMINATIONS

8.1 Subject to paragraph 6.1, the criteria for assessing the benefit to the public for the purposes of renewal of determinations, other than interim determinations, are as set out below.

(a) During the start-up phase on the route:

- the start-up phase allocation criteria set out in paragraph 7 apply in relation to that part of the capacity which is reasonably necessary for a level of scheduled international services necessary to permit the development of efficient, commercially sustainable operations; and
- the criteria set out in paragraph 8.2 apply to the balance of the capacity.

(b) After the start-up phase on the route, the criteria set out in paragraph 8.2 apply.

8.2 After the start-up phase on the route, the criteria for assessing benefit to the public are:

- (a) whether the carrier seeking renewal has failed to service the route effectively; and
- (b) whether use of the capacity in whole or in part by another Australian carrier which has applied for that capacity would better serve the public having regard to the criteria set out in paragraph 4 and paragraph 5,

and the Commission should allocate the capacity to the carrier seeking renewal unless both of those criteria are met, in which case all or part of the capacity can be reallocated.