

# DETERMINATION

## AN ALLOCATION OF SHELF CAPACITY ON THE INDONESIA ROUTE TO QANTAS AIRWAYS LIMITED (ACN 009 661 901)

Determination Number:  
IASC/DET/9730

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Date: 5 September 1997

Members:

James K Bain  
Chairman

Russell V Miller  
Member

## CONTENTS

	Page
1. The application.....	3
2. Current services to Indonesia .....	3
3. Provisions of relevant Air Services Agreements.....	3
4. Legislative framework.....	4
5. Characteristics of the Australia - Indonesia route .....	4
6. Commission's assessment of the applicant's claims .....	5
7. Other issues .....	5
Commencement of operations .....	5
Period of the determination .....	6
Utilisation of the capacity .....	6
Ownership and control of the carrier .....	6
8. Determination allocating shelf capacity on the Indonesia route to Qantas (IASC/DET/9730).....	6

## ATTACHMENTS

A. Current services between Australia and Indonesia.....	8
B. Legislative framework .....	9
C. Relevant criteria under paragraphs 4 and 6 of the Policy Statement .....	10

## **1. The application**

1.1. On 14 July 1997, Qantas Airways Limited ACN 009 661 901 (Qantas) wrote to the Commission seeking an allocation of shelf capacity to Indonesia.

1.2. In accordance with the requirements of the *International Air Services Commission Act 1992* (the Act), on 21 July 1997 the Commission published a notice inviting applications for, and submissions about, an allocation of shelf capacity to Indonesia. The closing date for applications and submissions was 4 August 1997. Qantas was the only applicant and no other submissions were received.

1.3. Qantas is seeking an additional 0.8 B747 equivalent units of capacity so that it can introduce two BAe146 services per week on the Cairns - Timika route and add another B737 service on the Darwin - Denpasar route. It is seeking the capacity effective from 26 October 1997.

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

## **2. Current services to Indonesia**

2.1. There are currently five airlines operating on the Australia - Indonesia route: Qantas, Ansett International, Garuda, Merpati and Sempati Air. They operate the equivalent of 42.3 B747 units of capacity per week over a total of 77 services. A complete list of services is provided in Attachment A.

2.2. With regard to the routes covered by the Qantas application, currently there are no services between Cairns and Timika while there are ten services per week between Darwin and Denpasar. Of the ten Darwin - Denpasar services, four are operated by Qantas, three by Ansett International and three by Garuda. All ten services are operated with B737 aircraft.

## **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. Under the MOU, Australia's current passenger capacity entitlement is 25 B747 equivalent units. This will increase to 27 B747 equivalents in October 1997.

3.3. Qantas has already been allocated 15.55 B747 equivalent units of capacity, Ansett International has been allocated 8.55 B747 equivalent units and National Jet Systems has been allocated 0.4 B747 equivalent units. There are, therefore, currently 0.65 B747 equivalent units of capacity available for immediate allocation and a further 1.85 B747 equivalent units available from October 1997. As Qantas is seeking capacity

effective from 26 October 1997, there is sufficient capacity available to meet the application.

## 4. Legislative framework

4.1. Allocations of capacity are made in accordance with the *International Air Services Commission Act 1992*. Under section 11 of the Act, the Minister makes Policy Statements setting out matters relevant to the Commission's performance of its functions, including criteria to be applied by the Commission in assessing the benefit to the public. The current Policy Statement (No. 3) was issued by the Minister on 23 April 1997. The legislative framework for making a determination allocating available capacity under the Act is set out in Attachment B.

4.2. The criteria applicable to assessing benefit to the public of an allocation of capacity, where there is only one applicant and no submissions are received about, or opposing the allocation, are those set out in Attachment C.

## 5. Characteristics of the Australia - Indonesia route

5.1. In the year ended 31 May 1997 traffic on the Australia - Indonesia route totalled approximately 1,081,400 passenger movements. Of these passenger movements 75% were passengers with a destination of either Australia or Indonesia, travelling directly between the two countries (direct traffic). A total of 8% of movements involved passengers travelling indirectly between the two countries (indirect traffic). The remaining 17% of the movements involved passengers travelling directly between Australia and Indonesia to and from countries beyond Indonesia or Australia (beyond traffic). Of this beyond traffic, 26% involved travel to or from the United Kingdom, 9% to or from the USA and 8% to or from Singapore.

5.2. Details of the passenger movements on the route between the years ended 31 May 1994 and 31 May 1997 are summarised below.

**Australia - Indonesia Passenger Movements  
Years Ended 31 May 1994 - 31 May 1997**

	Year ended May				Average annual growth 94-97	Growth for 96-97
	1994	1995	1996	1997		
Direct traffic	519,200	604,700	684,200	807,100	15.8%	18.0%
Indirect traffic	65,000	82,200	78,300	86,000	9.8%	9.8%
Beyond traffic	153,900	201,100	199,900	188,300	6.9%	-5.8%
<b>Total traffic</b>	<b>738,200</b>	<b>888,100</b>	<b>962,500</b>	<b>1,081,400</b>	<b>13.6%</b>	<b>12.4%</b>

*Note: Data in this table have been derived from information supplied by the Australian Bureau of Statistics and includes both scheduled and charter traffic. Figures may not add to totals due to rounding.*

5.3. In the year ended 31 May 1997, Australian residents comprised 65% of the direct passenger traffic. Australians visiting Indonesia did so mainly for a holiday (76%) or business (13%). In the same year, Indonesia visitors travelled to Australia mainly for a holiday (62%) or education (11%).

## **6. Commission's assessment of the applicant's claims**

6.1. Under the Policy Statement, the relevant criteria to be applied in assessing benefit to the public, given that there is only one applicant and no other submissions, is whether Qantas is reasonably capable of obtaining the necessary approvals and whether it is reasonably capable of implementing its proposals.

6.2. Qantas is a major international carrier and currently operates 26 services per week between Australia and Indonesia. It already has most of the approvals necessary to operate the services as proposed.

6.3. The Commission notes that the Qantas proposal involves the introduction of services to Timika in Irian Jaya. Timika airport currently handles charter services but is not classified by the Indonesian authorities as an airport for international scheduled passenger services. The Commission is aware that negotiations to change the classification of Timika airport to permit scheduled passenger services are well advanced and that a favourable outcome is expected. Furthermore, the Department of Transport and Regional Development has advised the Commission that Timika is available to Australian carriers under the Australia - Indonesia Air Services Agreement.

6.4. The Commission concludes that Qantas is reasonably capable of obtaining the necessary approvals to implement its proposal subject to Timika airport being classified as an airport for international scheduled passenger services. The allocation of 0.8 B747 equivalent units of capacity on the Australia - Indonesia route to Qantas would be of benefit to the public and the Commission proposes to make an allocation of that capacity to Qantas subject to Timika airport being so classified.

## **7. Other issues**

### **Commencement of operations**

7.1. Qantas proposes to commence operating on 26 October 1997. The Commission will specify that Qantas must commence utilisation of the capacity no later than the week commencing 26 October 1997.

## Period of the determination

7.2. Qantas has requested a five year determination. The Commission will grant Qantas a determination for five years from the date of the determination.

## Utilisation of the capacity

7.3. Qantas has indicated that it will fully utilise the capacity from 26 October 1997. The Commission will specify that Qantas must fully utilise the capacity from the week commencing 26 October 1997.

7.4. Qantas has stated that it will utilise the capacity in its own right. The Commission will specify that:

- the capacity is only to be used by Qantas; and
- Qantas cannot use the capacity by providing services jointly with any other carrier without the prior approval of the Commission.

For this purpose, the Commission considers that joint services include *inter alia* code-sharing, seat exchanges, block space arrangements and revenue pooling.

## Ownership and control of the carrier

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

## 8. Determination allocating shelf capacity on the Indonesia route to Qantas (IASC/DET/9730)

8.1. The Commission finds that an allocation of capacity on the Australia - Indonesia route to Qantas as sought would be of benefit to the public.

8.2. The Commission makes a determination in favour of Qantas, allocating 0.8 B747 equivalent units of capacity per week in each direction between Australia and Indonesia under the Australia - Indonesia Air Services Agreement on the following basis:

- 0.65 B747 equivalent units of shelf capacity with immediate effect; and
- 0.15 B747 equivalent units of shelf capacity available from October 1997.

8.3. The allocation of 0.5 B747 equivalent units of capacity is subject to Timika airport being classified as an airport for international scheduled passenger services.

8.4. The determination is for five years from the date of the determination.

8.5. The determination is subject to the following conditions:

- Qantas is required to:
  - commence utilisation of the allocated capacity no later than the week commencing 26 October 1997 or from such other date approved by the Commission; and
  - fully utilise all of the allocated capacity from no later than the week commencing 26 October 1997 or from such other date approved by the Commission.
- only Qantas is permitted to utilise the capacity;
- Qantas is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- 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 - Indonesia 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 - Indonesia Air Services Agreement.

Dated: 5 September 1997

James K Bain  
Chairman

Russell V Miller  
Member

## A. Current services between Australia and Indonesia

Airline	Frequency	Aircraft	Units of capacity	Seats	Route
Qantas	7	B74L (SP)	5.25	2,072	SYD-CGK-SIN
	1	B743	1	420	SYD-DPS
	1	B742	1	408	SYD-DPS
	3	B763	1.65	684	MEL-DPS-SIN
	2	B763	1.1	456	MEL-CGK
	2	B763	1.1	456	PER-DPS
	1	B762	0.5	195	PER-DPS
	3	B763	1.65	684	PER-CGK
	2	B763	1.1	(MAL) 464	BNE-CGK-KUL
	4	B733	1.2	464	DRW-DPS
Ansett	1	B767-200	0.5	207	SYD-DPS
	1	B767-200	0.5	207	MEL-DPS
	2	A320	0.8	288	PER-DPS
	3	B737-300	0.9	342	DRW-DPS
	2	B767-200	1	344	SYD-CGK-KUL
	4	B767-300	2	840	SYD-CGK-KUL
	1	B767-300	0.5	210	MEL-SYD-CGK-KUL-CGK-SYD
Garuda	4	AB6	2.2	900	CGK-DPS-SYD
	1	AB6	0.55	225	CGK-DPS-SYD-MEL-DPS-CGK
	2	AB6	1.1	450	CGK-MEL-SYD-DPS-CGK
	2	DC10	1.3	494	CGK-DPS-MEL
	1	DC10	0.65	247	CGK-DPS-MEL-ADL-DPS-CGK
	1	DC10	0.65	247	CGK-DPS-ADL-MEL-DPS-CGK
	3	DC10	1.95	741	CGK-DPS-BNE
	3	B734	0.9	372	CGK-DPS-DRW-CNS
	4	A330	3	1172	CGK-DPS-PER
	3	A330	2.25	879	CGK-PER-DPS-CGK
Merpati	2	B737-200	0.5	192	KOE-DRW
	1	B737-200	0.25	96	DPS-PHE
	1	A310-300	0.45	186	CGK-MEL
	2	A310-300	0.9	372	CGK-DPS-MEL
	2	A310-300	0.9	372	CGK-DPS-SYD
	Sempati	2	A300-B4	1.2	508
1		A300-B4	0.6	254	CGK-PER-CGK
1		A300-B4	0.6	254	DPS-PER
1		A300-B4	0.6	254	DPS-PER-CGK
<b>Total</b>	<b>77</b>		<b>42.3</b>	<b>16,492</b>	

Port codes are SYD - Sydney, MEL - Melbourne, BNE - Brisbane, ADL - Adelaide, PER - Perth, DRW - Darwin, CNS - Cairns, CGK - Jakarta, DPS - Denpasar, KOE - Kupang, KUL - Kuala Lumpur

## **B. Legislative framework**

1. Subsection 7(1) of the Act allows the Commission to make a determination allocating available capacity.
2. Under section 13 of the Act, the Commission must, by notice, invite applications for and submissions about an allocation of shelf capacity.
3. Under subsection 13(4), any person may apply to the Commission for a determination allocating the capacity.
4. Subsection 7(2) requires that the determination:
  - (a) must not allocate available capacity unless the Commission is satisfied that the allocation would be of benefit to the public; and
  - (b) if more than one application was made relating to the allocation - must make the allocation that the Commission is satisfied, having regard to the applications made, would be of the greatest benefit to the public.
5. Under subsection 7(3), 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 statements made by the Minister under section 11.
6. The section 11 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. The criteria applicable to assessing benefit to the public of an allocation of shelf capacity where there is only one applicant and no submissions were received about, or opposing, the allocation, are those contained in paragraphs 4 and 6 of the Policy Statement.
7. Section 15 of the Act relates to the contents of determinations including the imposition of conditions relating to the use of capacity. Section 16 relates to notifications of determinations.

## **C. Relevant criteria under paragraphs 4 and 6 of the Policy Statement**

### **Paragraph 4 requirements**

#### **4. GENERAL CRITERIA FOR ASSESSING BENEFIT TO THE PUBLIC**

4.1 Subject to paragraph 6, the general criteria against which the benefit to the public is to be assessed by the Commission in considering the circumstances in relation to an allocation of capacity or the renewal or review of a determination allocating capacity to an Australian carrier are as set out below:

##### 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.

### **Paragraph 6.2 requirements**

#### **6. CRITERIA APPLICABLE IN PARTICULAR CIRCUMSTANCES**

##### One applicant or sufficient available capacity

##### 6.2 In circumstances where:

- (a) there is only one applicant (or where more than one application is made but all applications except one are withdrawn) for allocation of capacity on a route; or
- (b) there is more than one applicant but, subject to paragraph 7.4, the amount of available capacity is equal to or exceeds the total amount of capacity applied for

only the criteria in paragraph 4 are applicable. However, if submissions are received about, or opposing, the allocation of capacity to a particular carrier, the Commission may also apply the additional criteria in paragraph 5.