

DECISIONS

DECISION: IASC/DEC/9819
VARIATION OF: IASC/DET/9711 AND 9729
THE ROUTE: PAPUA NEW GUINEA
THE APPLICANT: FLIGHT WEST AIRLINES PTY
LIMITED
(ACN 010 718 975)
PUBLIC REGISTER FILE: IASC/APP/98021

DECISION: IASC/DEC/9820
VARIATION OF: IASC/DET/9724
THE ROUTE: PAPUA NEW GUINEA
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 991)
PUBLIC REGISTER FILE: IASC/APP/98021

1 The applications

1.1 These applications come about because of changes in the method of describing capacity and route entitlements under the Australia-Papua New Guinea (PNG) air services arrangements. The primary purpose of the applications is to update the description of the capacity already allocated to each applicant to accord with the new method of describing capacity under those arrangements.

Flight West

1.2 On 6 October 1998, Flight West Airlines Pty Limited (Flight West) applied to the Commission to vary Determinations IASC/DET/9724 and 9729 to describe capacity already allocated to it in terms which accord with the new method of describing capacity under the Australia-PNG Memorandum of Understanding signed on 18 August 1998 (the August 1998 MOU).

Qantas

1.3 On 28 August 1998, Qantas Airways Limited (Qantas) applied to the Commission to vary Determination IASC/DET/9724, as amended by Decision IASC/DEC/9719, to describe capacity already allocated to it in terms which accord with the new method of describing capacity under the August 1998 MOU.

1.4 Qantas is also seeking a small amount of additional capacity.

1.5 The Commission published a notice inviting submissions from interested parties about the Qantas application. No submissions were received.

2 Provisions of relevant Air Services Agreements

2.1 The August 1998 MOU provides 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.

2.2 Under the arrangements in place at the time of issuing the relevant determinations to Flight West and Qantas, capacity entitlements were expressed in terms of B747 units per week and separate route structures were in place between Northern Australia and PNG and between South East Australia and PNG.

2.3 Under the arrangements effective from 18 August 1998, passenger capacity entitlements are now expressed in terms of seats per week. There is separate capacity available for freight-only operations and a single route structure.

2.4 The August 1998 MOU does not contain a conversion formula which would permit the Commission to easily calculate the conversion of B747 units to seats. Accordingly, the Commission has decided to apply a generally accepted conversion formula of one B747 unit being equivalent to 400 seats.

3 Commission's consideration

3.1 Variations to determinations are made by the Commission in accordance with the *International Air Services Commission Act 1992* (the Act) and the Minister's Policy Statement (no 3 of 23 April 1997) which was issued under section 11 of the Act.

3.2 Under section 24 of the Act, the Commission must either make a decision confirming the determination or varying the determination in a way that gives effect to the variation requested in the application.

Flight West

3.3 Flight West has sought the approval of the Commission for its determinations to be amended to reflect a total capacity allocation of 840 seats per week in each direction. Flight West's existing capacity allocations total 2.1 B747 units per week in each direction. This is equivalent to 840 seats using the conversion formula referred to at paragraph 2.4.

Qantas

3.4 Qantas has sought the approval of the Commission for its determination to be amended to reflect a total capacity allocation of 1550 seats per week in each direction.

3.5 Qantas' existing capacity allocation is 3.25 B747 units per week in a northbound direction and 3.3 B747 units per week in a southbound direction. The allocated capacity converts to a maximum of 1320 seats using the conversion formula referred to in paragraph 2.4.

3.6 Prior to the change in the air services arrangements, Qantas had applied for an additional 0.55 B747 units per week in a northbound direction and 0.5 B747 units per week in a southbound direction. This is equivalent to an additional maximum of 220 seats, however Qantas is seeking 230 seats.

3.7 Qantas has advised the Commission that 1550 seats will provide it with flexibility in relation to seasonal and code shared capacity levels.

3.8 The Minister's Policy Statement of 23 April 1997 makes it clear that where an applicant already operating services on a route seeks a minor increase in capacity, the Commission may deal with the application as a variation rather than a new allocation. Although the Commission has some reservations about whether an additional 230 seats per week, amounting to an additional 15% of capacity, constitutes a minor increase, it notes that the Explanatory Statement to the Policy Statement suggests that up to the equivalent of one B747 unit can be considered a minor adjustment.

3.9 In the circumstances of this case, and without setting any precedent, the Commission is prepared to deal with the request for additional capacity by way of variation.

4 Other issues

Route structure

4.1 The Commission will vary the relevant determinations to reflect the revised route structure under which Australian carriers can now operate between Australia and PNG.

Capacity utilisation

4.2 The Commission will vary the relevant determinations to give effect to the revised capacity utilisation dates as indicated in each of the applicant's applications.

5 Decision (IASC/DEC/9819) – Flight West

5.1 In accordance with section 24 of the Act, the Commission varies the following determinations to give effect to the request by Flight West:

in Determination IASC/DET/9711 by

deleting from paragraph 10.1 the word "Northern".

replacing paragraph 10.2 with the following:

“10.2 The Commission makes a determination in favour of Flight West, allocating 680 seats per week in each direction between Australia and Papua New Guinea under the Australia – Papua New Guinea Air Services Agreement.”;

and

replacing the first dot point of paragraph 10.4 with the following:

- “Flight West is required to fully utilise:
 - 630 seats per week in each direction from 1 January 1999 or from such other date approved by the Commission; and
 - 680 seats per week in each direction from 1 May 1999 or from such other date approved by the Commission.”

in Determination IASC/DET/9729 by

replacing paragraph 9.2 with the following:

“9.2 The Commission makes a determination in favour of Flight West, allocating 160 seats per week in each direction between Australia and Papua New Guinea under the Australia – Papua New Guinea Air Services Agreement.”;

and

replacing the first dot point of paragraph 9.4 with the following:

- “Flight West is required to fully utilise the capacity from 1 May 1999 or from such other date approved by the Commission.”

5.2 The text of Determinations IASC/DET/9711 and 9729 as amended by this Decision are set out in Attachments A and B respectively.

6 Decision (IASC/DEC/9820) – Qantas

6.1 In accordance with section 24 of the Act, the Commission varies Determination IASC/DET/9724 (as varied by Decision IASC/DEC/9719) to give effect to the request by Qantas by:

replacing paragraph 8.2 with the following:

“8.2 The Commission makes a fresh determination in favour of Qantas, allocating 1550 seats per week in each direction between Australia and Papua New Guinea under the Australia - Papua New Guinea Air Services Agreement.”;

and

replacing the second dot point of paragraph 8.4 with the following:

- “Qantas is required to fully utilise:
 - 1227 seats per week in each direction from 25 October 1998 or from such other date approved by the Commission; and
 - 1550 seats per week in each direction from 1 November 1999 or from such other date approved by the Commission.”

6.2 The text of Determination IASC/DET/9724 (as varied by Decision IASC/DEC/9719) as amended by this Decision is set out in Attachment C.

Dated: 22 October 1998

Russell V Miller
Chairman

Michael L Lawriwsky
Member

Stephen Lonergan
Member

A. Determination IASC/DET/9711 as amended by Decision IASC/DEC/9819

10.1 The Commission finds that an allocation to Flight West on the Australia - Papua New Guinea route as sought would be of benefit to the public.

10.2 The Commission makes a determination in favour of Flight West, allocating 680 seats per week in each direction between Australia and Papua New Guinea under the Australia - Papua New Guinea Air Services Agreement.

10.3 The determination is for 5 years from the date of the determination.

10.4 The determination is subject to the following conditions:

- Flight West is required to fully utilise:
 - 630 seats per week in each direction from 1 January 1999 or from such other date approved by the Commission; and
 - 680 seats per week in each direction from 1 May 1999 or from such other date approved by the Commission.
- only Flight West is permitted to utilise the capacity;
- Flight West 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 Flight West 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 Flight West or be in a position to exercise effective control of Flight West, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of Flight West 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.**

B. Determination IASC/DET/9729 as amended by Decision IASC/DEC/9819

9.1 The Commission finds that an allocation of capacity on the Australia - Papua New Guinea route to Flight West as sought would be of benefit to the public.

9.2 The Commission makes a determination in favour of Flight West, allocating 160 seats per week in each direction between Australia and Papua New Guinea under the Australia - Papua New Guinea Air Services Agreement.

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

9.4 The determination is subject to the following conditions:

- Flight West is required to fully utilise the capacity from 1 May 1999 or from such other date approved by the Commission.
- only Flight West is permitted to utilise the capacity;
- Flight West 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 Flight West 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 Flight West or be in a position to exercise effective control of Flight West, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of Flight West 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.

C. Determination IASC/DET/9724 as amended by Decisions IASC/DEC/9719 and IASC/DEC/9820

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 1550 seats per week in each direction between Australia and Papua New Guinea under the Australia - Papua New Guinea Air Services Agreement.

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:
 - 1227 seats per week in each direction from 25 October 1998 or from such other date approved by the Commission; and
 - 1550 seats per week in each direction from 1 November 1999 or from such other date approved by the Commission.
- 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; and
 - 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.