

# DETERMINATION

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

Determination Number:  
IASC/DET/9801

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Date: 30 January 1998

Members:

James K Bain  
Chairman

Russell V Miller  
Member

Michael L Lawriwsky  
Member

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## **1. The application**

1.1. On 22 December 1997, Qantas Airways Limited ACN 009 661 901 (Qantas) wrote to the Commission seeking an allocation of shelf capacity to India.

1.2. In accordance with the requirements of the *International Air Services Commission Act 1992* (the Act), on 5 January 1998 the Commission published a notice inviting applications for, and submissions about, an allocation of shelf capacity to India. On 9 January 1998 Qantas amended its application. Subsequently, on 12 January 1998, the Commission published a notice inviting applications for, and submissions about, the amended application. The closing date for applications and submissions was 23 January 1998. Qantas was the only applicant and no other submissions were received.

1.3. Qantas is seeking an additional 691 seats of capacity per week so that it can provide daily services between Sydney and Mumbai:

- 458 seats for two B767 services commencing late March 1998;
- 229 seats for another B767 service commencing August 1998; and
- four seats from August 1998 to enable the seating capacity of its existing services to increase from 228 to 229 seats per flight.

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

## **2. Current services to India**

2.1. Qantas currently operates four B767 services per week between Sydney and Mumbai. It is the only airline offering direct services between Australia and India.

2.2. Indirect services are provided by a number of airlines, including Singapore Airlines, Malaysian Airlines, Thai International and Garuda Indonesia.

## **3. Provisions of relevant Air Services Agreements**

3.1. The Memorandum of Understanding (MOU) between Australia and India of 16 October 1996 and the Air Services Agreement (ASA) of 11 July 1949 provides for the operation of international air services and the dual designation of Australian carriers.

3.2. Under the MOU Australia's current passenger capacity entitlement between Australia and India is 1650 seats per week in each direction, increasing to 2100 seats per week from 1 November 1998.

3.3. Qantas has previously been allocated a total of 912 seats in each direction between Australia and India. This leaves 738 seats of shelf capacity immediately

available, with an additional 450 seats of shelf capacity becoming available from 1 November 1998. Accordingly, there is sufficient capacity available to meet Qantas' 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 A.

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 B.

## **5. Characteristics of the Australia - India route**

5.1. In the year ended 30 September 1997 traffic on the Australia - India route totalled approximately 134,600 passenger movements. Of these passenger movements 15% were passengers with a destination of either Australia or India, travelling directly between the two countries (direct traffic). A total of 80% of movements involved passengers travelling indirectly between the two countries (indirect traffic). The remaining 5% of the movements involved passengers travelling directly between Australia and India to and from countries beyond India or Australia (beyond traffic).

5.2. Details of the passenger movements on the route between the years ended 30 September 1994 and 30 September 1997 are summarised below.

**Australia - India Passenger Movements  
Years Ended 30 September 1994 - 30 September 1997**

	Year ended September				Average annual growth 94-97	Growth for 96-97
	1994	1995	1996	1997		
Direct traffic	5,900	7,200	10,900	19,600	49.6%	79.5%
Indirect traffic	75,200	89,500	107,400	107,600	12.7%	0.1%
Beyond traffic	1,000	3,600	7,900	7,400	95.1%	-6.1%
<b>Total traffic</b>	<b>82,100</b>	<b>100,300</b>	<b>126,200</b>	<b>134,600</b>	<b>17.9%</b>	<b>6.6%</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 30 September 1997, Australian residents comprised 59% of the direct passenger traffic. Australians visiting India did so mainly to visit friends and relatives (39%) or for a holiday (35%). In the same year, Indian visitors travelled to Australia mainly for a holiday (29%) or to visit friends and relatives (24%).

## **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 an established international carrier and already operates four B767 services per week to India. The Commission considers that Qantas has the technical and financial resources to implement its proposal.

6.3. The Commission concludes that Qantas is reasonably capable of obtaining the necessary approvals to implement its proposal. Accordingly, the Commission concludes that the allocation of 691 seats per week of capacity on the Australia-India route to Qantas would be of benefit to the public.

## **7. Other issues**

### **Commencement of operations**

7.1. Qantas proposes to commence utilisation of the capacity from the week commencing 30 March 1998. The Commission will specify that Qantas must commence utilisation of the capacity from the week commencing 30 March 1998 or from such other date as approved by the Commission.

### **Period of the determination**

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

### **Utilisation of the capacity**

7.3. Qantas proposes to utilise 458 seats from the week commencing 30 March 1998 and the remaining 233 seats by the week commencing 3 August 1998. The Commission will specify that Qantas must fully utilise 458 seats from the week commencing 30 March 1998 and fully utilise the remaining 233 seats from the week commencing 3 August 1998 or from such other date as approved by the Commission.

7.4. Qantas has stated that the capacity will be used 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 India route to Qantas (IASC/DET/9801)**

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

8.2. The Commission makes a determination in favour of Qantas, allocating 691 seats per week in each direction between Australia and India under the Australia - India Air Services Agreement.

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

8.4. The determination is subject to the following conditions:

- Qantas is required to:
  - commence utilisation of the allocated capacity no later than in the week commencing 30 March 1998 or from such other date approved by the Commission;
  - fully utilise 458 seats per week in each direction from the week commencing 30 March 1998; and
  - fully utilise the remaining 233 seats per week in each direction from the week commencing 3 August 1998;
- 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 - India 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 - India Air Services Agreement.

Dated: 30 January 1998

James K Bain  
Chairman

Russell V Miller  
Member

Michael L Lawriwsky  
Member



## **A. 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.

## **B. 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.