

DETERMINATION

DETERMINATION: IASC/DET/9902
THE ROUTE: INDONESIA
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901)
PUBLIC REGISTER FILES: IASC/APP/99014

1 The application

1.1 On 23 February 1999, an application was received from Qantas Airways Limited (Qantas) for an allocation of capacity beyond Indonesia under the Australia – Indonesia Air Services Agreement. Qantas is seeking an allocation of one frequency per week in each direction beyond Jakarta to enable it to increase its frequencies between Indonesia and Singapore from nine to ten per week with effect from 28 March 1999.

1.2 The Commission published a notice inviting other applications for all or any part of the available capacity and submissions from interested parties about the Qantas application. None were received.

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

2 Provisions of relevant Air Services Agreements

Indonesia

2.1 The Australia – Indonesia Air Services Agreement of 7 March 1969, and the Memoranda of Understanding of 8 October 1992, 13 May 1995 and 9 May 1996, provide for designated carriers to operate services in accordance with agreed capacity entitlements.

2.2 Under the arrangements, the designated airlines of Australia are entitled to operate up to a total of 27 B747 equivalent services weekly between Australia and Indonesia. On services beyond Indonesia, Australian carriers are

“entitled to exercise full traffic rights between Jakarta/Denpasar/an additional point in Indonesia and Singapore, points in Malaysia and a point in Thailand with up to seventeen frequencies weekly using 10.6 B747 equivalent services weekly in each direction beyond Jakarta/Denpasar/an additional point in Indonesia, provided that no more than four frequencies per week each way using any aircraft type may be operated beyond Denpasar”.

2.3 Under section 54B of the *International Air Services Commission Act 1992* (the Act), the Minister made a determination on 1 March 1999 which allocated a total of 5.85 B747 equivalent services weekly and nine frequencies weekly (four of which must serve Denpasar) to Qantas for services beyond Indonesia. This allocation results in the following capacity for services beyond Indonesia to third countries being available for allocation:

- 4.75 B747 equivalent services weekly on eight frequencies per week beyond Jakarta and/or an additional point in Indonesia (excluding Denpasar) to Singapore, points in Malaysia and a point in Thailand.

Singapore

2.4 Under the Australia – Singapore bilateral arrangements, there are no limitations which prevent the same amount of capacity from being operated over the entire route. Qantas has been allocated a total of 14,740 seats per week on the Singapore route.

3 Legislative framework

3.1 Prior to 25 January 1999, the Commission allocated capacity to Australian carriers to operate services directly between Australia and other countries. With effect from 25 January 1999, the Act was amended to provide the Commission with the responsibility for the allocation of all capacity available to Australian carriers, including services between Australia and other countries via third countries, and between Australia and other countries and then beyond to third countries.

3.2 The Minister's Policy Statement (No 3 of 23 April 1997) was amended on 9 March 1999 to provide the Commission with relevant criteria when considering an application where, under a particular bilateral arrangement, limitations apply which prevent the same amount of capacity from being operated over the entire route. In these circumstances, the Commission is to apply the provisions of 4, 5 and 6 of the Policy Statement as appropriate to the allocation of that limited capacity.

3.3 In cases where, under a particular bilateral arrangement, the same amount of capacity can be operated over the entire route, the Commission is to apply the provisions of 4, 5 and 6 of the Policy Statement as appropriate to the allocation of that capacity over the entire route.

3.4 The amendment to the Policy Statement also includes provision for the Commission to specify particular points to be served on the route when the criteria in paragraph 5 are being applied to an application. In other cases, the Commission is to provide the carrier with flexibility to distribute the capacity allocated to it among some or all of the combination of points available on the route.

4 Commission's assessment

4.1 Allocations of capacity and variations to determinations are made by the Commission in accordance with the Act and the Minister's Policy Statement (No 3 of 23 April 1997), as amended on 9 March 1999, which was issued under section 11 of the Act.

4.2 The Act and Policy Statement provide that if there are no competing applications, the relevant criteria for the Commission in considering an application for capacity are whether the applicant is reasonably capable of both obtaining the necessary approvals to operate on the route and of implementing its proposal (Paragraph 4 of the Policy Statement). In circumstances where submissions are received about or opposing an application, the Commission may also apply the criteria set out in Paragraph 5 of the Policy Statement. In this case, no submissions were received.

4.3 Qantas is an established international carrier which has the technical and financial resources to implement its proposal and is already operating services between Jakarta and Singapore. In addition, the Commission notes that Qantas has sufficient capacity allocated on the Australia – Indonesia and Australia – Singapore routes to enable it to operate the additional Indonesia – Singapore frequency as sought.

4.4 The Commission concludes that Qantas is reasonably capable of obtaining the necessary approvals and of implementing its proposal and that the allocation to Qantas of one frequency per week in each direction beyond Jakarta would be of benefit to the public.

5 Utilisation of capacity

5.1 Qantas proposes to commence utilisation of the additional frequency from 28 March 1999. The Commission proposes to specify that Qantas fully utilise the frequency from the week commencing 28 March 1999.

5.2 In relation to the utilisation of capacity (as distinct from the number of frequencies) between Indonesia and Singapore, Qantas has stated that, because of the change to the aircraft type being operated (from a mix of B747 and B767-300 aircraft to an all B767-300 operation), the amount of capacity utilised will decrease from its current allocation of 5.85 B747 units per week to 5.5 B747 units per week. Qantas has requested that it be permitted to retain its current allocation to provide some flexibility should further changes be required to aircraft types in the future.

5.3 Given the absence of other applications and the amount of capacity currently available for allocation, the Commission is prepared to permit Qantas to retain its current allocation of capacity for the present. However, should other potential applicants indicate an interest in the unused capacity, the Commission would expect Qantas to immediately return any unutilised capacity.

6 Other issues

6.1 Qantas has requested a determination for five years. The Commission proposes to make a determination for five years from the date of the determination.

6.2 The Commission proposes that this determination should include the usual limitations on changes in the ownership and control of Qantas. These are specified below.

7 Determination allocating capacity on the Indonesia route to Qantas (IASC/DET/9902)

7.1 The Commission finds that an allocation of capacity to Qantas beyond Indonesia would be of benefit to the public.

7.2 The Commission makes a determination in favour of Qantas, allocating one frequency per week in each direction beyond Jakarta under the Australia – Indonesia Air Services Agreement.

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

7.4 The determination is subject to the following conditions:

- Qantas is required to fully utilise the frequency from the week commencing 28 March 1999;
- 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: 22 March 1999

Russell Miller
Chairman

Michael Lawriwsky
Member

Stephen Lonergan
Member