

DETERMINATIONS

DETERMINATIONS: IASC/DET/9905 & 9906
THE ROUTE: FIJI
THE APPLICANTS: ANSETT INTERNATIONAL LIMITED
(ACN 060 622 460)
QANTAS AIRWAYS LIMITED
(ACN 009 661 901)
PUBLIC REGISTER FILES: IASC/APP/99015

1 The applications

1.1 On 9 March 1999, an application was received from Qantas Airways Limited (Qantas) for an allocation of capacity on the Fiji route. The Commission published a notice inviting other applications for all or any part of the capacity and submissions from interested parties about the application. An application was received from Ansett International Limited (Ansett International) and submissions were received from the Queensland Government.

1.2 Qantas is seeking an allocation of 600 seats per week in each direction to enable it to expand its operations on the Fiji route and is proposing to utilise the capacity under a code share arrangement with Air Pacific. It has requested that it increase its capacity (to coincide with an expansion of Air Pacific's own services) by 400 seats per week with effect from 15 April 1999, an additional 57 seats per week from 1 June 1999 and a further 143 seats per week from 1 October 1999.

1.3 Ansett International is seeking an allocation of 288 seats per week in each direction to enable it to operate Brisbane – Nadi flights for the first time. It plans to commence the first flight (144 seats per week) with effect from 26 June 1999, with the second flight commencing on 3 November 1999 (an additional 144 seats per week).

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

2 Current services

2.1 The following services are currently operated between Australia and Fiji on a weekly basis:

<u>Ansett International</u>			
Route	Freq.	Aircraft	Seats
• Sydney – Nadi & v.v.	1	B767-200	207
• Sydney – Nadi & v.v.	1	A320	144
		Total	351

Qantas/Air Pacific

Route	Freq.	Aircraft	QF seats	FJ seats
(Air Pacific operated flights)				
• Sydney – Nadi & v.v.	5	B747-200	995	1195
• Sydney – Nadi & v.v.	1	B767-300	117	139
• Sydney – Nadi & v.v.	2	B737-700	100	128
• Sydney – Suva & v.v.	2	B737-700	100	128
• Brisbane – Nadi & v.v.	6	B737-500	288	360
• Brisbane – Nadi & v.v.	1	B737-300	48	78
• Melbourne – Nadi & v.v.	1	B747-200	199	239
• Melbourne – Nadi & v.v.	1	B767-300	117	139
(Qantas operated flight)				
• Melbourne – Nadi & v.v.	1	B767-300	143	85
		Total	2107	2491

2.2 Indirect routings are available on Air New Zealand services via Auckland.

3 Provisions of relevant Air Services Agreements

3.1 The Australia – Fiji Air Services Agreement of 24 March 1982 and the Memorandum of Understanding of 10 March 1998 (and subsequent exchanges of letters between the aeronautical authorities of Australia and Fiji) entitle Australian carriers to operate services in accordance with agreed capacity entitlements. The arrangements also provide for the multiple designation of Australian carriers and allow designated airlines to operate services through code sharing, blocked space or other cooperative service agreements.

3.2 Under the air services arrangements, the designated airlines of Australia are entitled to operate up to a total of 3,300 seats per week. Currently, Qantas has an allocation of 1,990 seats per week and Ansett International has an allocation of 410 seats per week, resulting in 900 seats per week being available for allocation.

4 Characteristics of the Fiji Route

4.1 In 1998 traffic on the Fiji route totalled approximately 290,100 passenger movements, an increase of 19.8% compared with the previous year. Traffic growth averaged 8.5% per annum between 1995 and 1998.

4.2 Details of the passenger movements on the route between 1995 and 1998 are summarised below.

**Passenger Movements on the Fiji route
1995 - 1998**

Traffic category	Year ended December				Compound annual growth rate 95-98
	1995	1996	1997	1998	
Direct traffic (Annual % change)	182,300	183,400 (+0.6%)	187,100 (+2.0%)	227,900 (+21.8%)	(78.6%) 7.7%
Indirect traffic (Annual % change)	8,400	8,700 (+3.6%)	13,500 (+55.2%)	15,300 (+13.3%)	(5.3%) 22.1%
Beyond traffic (Annual % change)	36,200	36,800 (+1.7%)	41,500 (+12.8%)	47,000 (+13.3%)	(16.2%) 9.1%
Total traffic (Annual % change)	226,900	229,000 (+0.9%)	242,100 (+5.7%)	290,100 (+19.8%)	(100.0%) 8.5%

Note: Data in this table have been derived from information supplied by the Australian Bureau of Statistics and include both scheduled and charter traffic. Figures may not add to totals due to rounding. Average annual growth records the compound annual growth rate. Direct traffic refers to passengers with a destination of either Australia or the Fiji travelling directly between the two countries. Indirect traffic refers to passengers travelling indirectly between the two countries passengers. Beyond traffic refers to passengers travelling directly between Australia and Fiji to and from countries beyond Fiji or Australia.

4.3 As the Commission noted in Determination IASC/DET/9715, this route is characterised by significant seasonal fluctuations. Capacity required to operate effectively on the route varies from season to season and within season as demand peaks and falls within the context of what is currently a strongly growing market.

5 Submissions

5.1 The Queensland Government made an initial submission requesting the Commission retain 400 seats of available capacity until 30 October 1999 to allow for the possible introduction of another carrier on the Brisbane – Fiji route. The submission was made prior to the Commission receiving the application from Ansett International for capacity to operate Brisbane – Nadi services.

5.2 The Queensland Government subsequently made another submission supporting both applications.

6 Commission's assessment

Allocation of capacity

6.1 Allocations of capacity 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, as amended on 9 March 1999) which was issued under section 11 of Act.

6.2 Under the Policy Statement, the relevant criteria to be applied in deciding whether or not to allocate capacity, given that there is sufficient capacity available for both applicants, are whether the applicants are reasonably capable of obtaining the necessary approvals and of implementing their proposals. 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.

6.3 Submissions about the allocation of capacity on the Fiji route have been received from the Queensland Government. However, given that Queensland Government supports the allocation of capacity to both Ansett International and Qantas, the Commission has decided that it is not necessary to assess the applications under the Paragraph 5 criteria in this case.

Ansett International

6.4 Ansett International is an established carrier which has the technical and financial resources to implement its proposal and is already operating services between Sydney and Nadi. The Commission concludes that Ansett International is reasonably capable of obtaining the necessary approvals and of implementing its proposal for services between Brisbane and Nadi.

6.5 Accordingly, the Commission will allocate to Ansett International a total of 288 seats per week in each direction on the Fiji route.

Qantas

6.6 Qantas is an established international carrier which has the technical and financial resources to implement its proposal and is already operating services on the route in conjunction with Air Pacific. The Commission concludes that Qantas is reasonably capable of obtaining the necessary approvals and of implementing its proposal.

6.7 Accordingly, the Commission will allocate to Qantas a total of 600 seats per week in each direction on the Fiji route.

6.8 Qantas has stated that the allocated capacity will be used in accordance with the Capacity Purchase/Sale Agreements dated 14 October 1996 between Qantas and Air

Pacific (the Agreements), copies of which have previously been provided to the Commission on a confidential basis.

6.9 The Commission has previously approved the Agreements in a number of earlier determinations allocating Qantas capacity on the Fiji and United States routes and the Commission does not consider it necessary at this time to assess the Agreements again in this particular case. Accordingly, the Commission approves the capacity allocated to Qantas in this determination being used under a code share on services operated by Air Pacific, subject to the conditions set out below and the relevant variations to the Agreements relating to operations on the Fiji route being consistent with the proposal outlined in Qantas' application.

7 Other issues

Ansett International

7.1 Ansett International proposes to utilise 144 seats per week with effect from 26 June 1999 and the additional 144 seats per week with effect from 3 November 1999. The Commission will specify that Ansett International fully utilise the capacity with effect from those dates.

7.2 Ansett International has requested a determination for five years. The Commission will make a determination for five years from the date of the determination.

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

Qantas

7.4 With effect from 1 September 1999, Qantas proposes to utilise a total of 457 seats per week. This capacity will be introduced in following stages: from 15 April 1999 - 118 seats per week; from 10 May 1999 – an additional 25 seats per week; from 1 June 1999 – an additional 272 seats per week; and from 1 September 1999 – an additional 42 seats per week. The Commission will specify that Qantas be required to fully utilise 457 seats per week from 1 September 1999.

7.5 Qantas proposes to utilise an additional 143 seats during the 1999/2000 Christmas/New Year period. The Commission will specify that Qantas be required to fully utilise the additional 143 seats per week from 1 November 1999.

7.6 Qantas has requested a determination for five years. The Commission will make a determination for five years from the date of the determination.

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

8 Role of the ACCC

8.1 The Policy Statement and its associated Explanatory Memorandum make clear that the ACCC retains primary responsibility for competition policy matters. Nothing in the Commission's decisions should be taken as indicating either approval or disapproval by the ACCC. The Commission's decisions are made without prejudicing, in any way, possible future consideration by the ACCC of the Qantas/Air Pacific code share agreement or operations under it.

9 Determination allocating capacity on the Fiji route to Ansett International (IASC/DET/9905)

9.1 The Commission finds that an allocation of capacity to Ansett International on the Fiji route as sought would be of benefit to the public.

9.2 The Commission makes a determination in favour of Ansett International, allocating 288 seats per week in each direction on the Fiji route under the Australia – Fiji 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:

- Ansett International is required to fully utilise 144 seats per week in each direction from 26 June 1999 or from such other date approved by the Commission, and to fully utilise 288 seats per week in each direction from 3 November 1999 or from such other date approved by the Commission;
- only Ansett International is permitted to utilise the capacity;
- Ansett International 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 Ansett International are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia - Fiji 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 Ansett International or be in a position to exercise effective control of Ansett International, without the prior consent of the Commission;

- changes in relation to the management, status or location of operations and Head Office of Ansett International 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 – Fiji Air Services Agreement;

10 Determination allocating capacity on the Fiji route to Qantas (IASC/DET/9906)

10.1 The Commission finds that an allocation of capacity to Qantas on the Fiji route as sought would be of benefit to the public.

10.2 The Commission makes a determination in favour of Qantas, allocating 600 seats per week in each direction on the Fiji route under the Australia – Fiji Air Services Agreement.

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

10.4 The determination is subject to the following conditions:

- Qantas is required to commence utilisation of the capacity from 15 April 1999;
- Qantas is required to fully utilise 457 seats per week in each direction from 1 September 1999 or from such other date approved by the Commission, and to fully utilise 600 seats per week 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 Pacific in accordance with:
 - the Capacity Purchase/Sale Agreements dated 14 October 1996 between Qantas and Air Pacific (the Agreements) as extended from time to time in accordance with their terms, or as varied except in relation to Article 1 - Capacity Sale (and associated attachments) and Article 3 - Schedule of Flights (and associated attachments); or
 - variations to the Agreements which relate to any of the excepted matters referred to above, subject to the prior approval of the Commission; or

- any new joint service arrangements between Qantas and Air Pacific for operations on the Fiji route whether or not it replaces one or both of the existing Agreements, with the prior approval of the Commission;

and subject to the relevant variations to the Agreements (and associated attachments) relating to operations on the Fiji route being consistent with the proposal outlined in Qantas' application of 9 March 1999;

and in any case, in accordance with this determination;

- to the extent that the capacity is used to provide services jointly with Air Pacific on the Fiji route:
 - Qantas must price and sell its services on the route independently;
 - Qantas must not pool revenues with Air Pacific; and
 - Qantas must take all reasonable steps to ensure passengers are informed, at the time of booking, 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 - Fiji 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 – Fiji Air Services Agreement.

Dated: 14 April 1999

Russell Miller
Chairman

Michael Lawriwsky
Member

Stephen Lonergan
Member