



INTERNATIONAL AIR SERVICES COMMISSION

DETERMINATION

DETERMINATION: [2001] IASC 107
THE ROUTE: JAPAN
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901) (QANTAS)
PUBLIC REGISTER FILES: IASC/APP/200102

1 The application

1.1 Qantas applied to the Commission on 17 January 2001 for an allocation of 1.4 units per week of capacity on the Japan route.

1.2 In conjunction with this application, Qantas applied to vary Determinations IASC/DET/9804 and IASC/DET/9910 to enable it to operate the allocated capacity between Australia and Japan, rather than being restricted to operating to and from Osaka on the Australia – Japan route. Seven B767-200 units of capacity in total are allocated under these Determinations.

1.3 Qantas has sought to be able to utilise these 7 units of capacity to Tokyo when runway slots at Narita Runway B become available. It expects that it would be in a position to commence daily B767-300 flights in June 2002. These variations have been prompted by changes in December 2000 to the Australia – Japan air services arrangements.

1.4 Qantas is seeking to combine the additional 1.4 units of capacity applied for with the seven B767-200 units of capacity allocated by Determinations IASC/DET/9804 and IASC/DET/9910. This means Qantas would have the 8.4 units of B767-200 capacity it requires to operate the proposed seven B767-300 weekly services.

1.5 On 24 January 2001, the Commission published a notice inviting submissions from interested parties about the application. No submissions were received opposing the allocation of the 1.4 units of capacity.

1.6 The Commission wrote to Qantas asking if it wished to have its application for capacity considered independently of, or concurrently with, the application for the variation to the two existing determinations. Qantas responded that it wished to have the application dealt with irrespective of any consideration of the variation applications.

1.7 On 12 April 2001 the Commission published a draft decision proposing to reject Qantas' application for additional capacity. In response to the draft decision Qantas, the Australian and International Pilots' Association (AIPA) and the Department of Industry, Science and Resources (DISR) made submissions. The draft decision and responses to it are discussed below.

2 Provisions of relevant air services arrangements

2.1 There are four B767-200 units of capacity available for immediate allocation.

3 Responses to the draft decision

3.1 Qantas, in its response to the draft decision considers two options, the first where Qantas' variation application is approved and the other where the variation application is rejected. If the variation application was approved then Qantas submits that it would be in a position to fully utilise the 1.4 units.

3.2 If on the other hand the variation application was rejected then it would not be in a position to fully utilise the 1.4 units originally requested. In this case Qantas requested that the application be amended to 1.2 units of capacity to permit it to implement an 18th weekly service to Narita.

3.3 AIPA submitted that the Commission had not considered nor provided any reason for not considering Qantas' application for an additional 1.4 units independently of the variation request despite Qantas' request that the applications be considered independently.

3.4 DISR had a number of comments on the variation application but no specific comments on the allocation application.

4 Commission's assessment

4.1 Under paragraph 6.2 of the Minister's Policy Statement, in the absence of submissions about or opposing an application, the Commission is required only to apply the criteria in paragraph 4 of the Policy Statement. In these circumstances the Commission cannot apply the paragraph 5 public benefit criteria of the Policy Statement. Under paragraph 4 the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public.

4.2 In Draft Decision [2001] IASC 210 the Commission proposed not to grant Qantas' request for a variation to Determinations IASC/DET/9804 and IASC/DET/9910. Decision [2001] IASC 210 has now been confirmed. This means that Qantas would not be able to fully use the 1.4 units for which it had originally applied. In response to the draft decision Qantas stated that it wished to reduce the sought to 1.2 units if the variation application was rejected.

4.3 The Commission accepts that Qantas is reasonably capable of implementing its proposal to fully utilise the 1.2 units for which it has applied. A prerequisite to utilisation of capacity to Narita is the allocation to Qantas of appropriate slots. Slots do become available at Narita on an ad hoc basis and new slots will become available for allocation when a second 2180m runway is completed at Narita in July 2002. Being the holder of allocated capacity will also assist Qantas in securing slots. In these

circumstances, the Commission concludes that an allocation to Qantas of 1.2 units of capacity per week in each direction on the Japan route would be of benefit to the public.

4.4 In determination [2000] IASC 114 allocating capacity to Ansett International for use at Narita the Commission expressed its concern at the possibility of Ansett International not being able to start operations within a three year period due to the unavailability of slots at Narita. The circumstances are the same for Qantas. Accordingly, the Commission proposes to issue an interim determination for three years.

5 Role of the ACCC

5.1 The Policy Statement and its associated Explanatory Memorandum make it 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.

6 Determination allocating capacity on the Japan route to Qantas ([2001] IASC 107)

6.1 The Commission makes an interim determination in favour of Qantas, allocating 1.2 B767-200 units of capacity per week in each direction on the Japan route under the Australia - Japan air services arrangements.

6.2 The determination is for three years from the date of the determination.

6.3 The determination is subject to the following conditions:

- Qantas is required to fully use the capacity from 1 November 2002 or from when slots become available at Narita airport, whichever is earlier, or from such other date approved by the Commission;;
- only Qantas is permitted to utilise the capacity;
- 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 - Japan air services arrangements 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 - Japan air services arrangements.

Dated: 29 May 2001

Ross Jones
Chairman

Michael Lawriwsky
Member

Stephen Lonergan
Member