



INTERNATIONAL AIR SERVICES COMMISSION

DETERMINATION

DETERMINATION NO: [2002] IASC 122
THE ROUTE: HONG KONG
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901)
PUBLIC REGISTER FILE: IASC/APP/200202

1 The application

1.1 On 27 August 2002, Qantas applied for an allocation of four frequencies and 1300 seats per week on the Hong Kong route under the Australia – Hong Kong air services arrangements. Qantas proposes to introduce an additional four B767-300 services per week between Sydney and Hong Kong from late November 2002.

1.2 On 2 September 2002, the Commission published a notice inviting submissions from interested parties about the application. A submission was received from Virgin Blue requesting that the Commission make an interim determination allocating the four services a week to Qantas for three years. Qantas responded to Virgin Blue's submission stating that it did not believe there was justification for restricting Qantas to an interim determination. Qantas also stated that it believed there would be more than sufficient capacity available within three years to meet airline requirements.

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

2 Provisions of relevant air services arrangements

2.1 The Australia – Hong Kong air services arrangements allow the designated airlines of each country to operate up to 11,800 seats per week for passenger services with a maximum of 35 services per week. A further two frequencies per week are available for all cargo services and each of these frequencies is convertible to be operated as passenger services at the ratio of 400 seats and one passenger frequency.

3 Current and proposed services

3.1 Qantas currently operates 29 passenger services utilising 7,796 seats and one freighter service per week.

3.2 From November this year until March 2003 Qantas proposes to operate 33 passenger services utilising 8,838 seats and one freighter service per week. From March 2003 it proposes to increase the seats utilised to 9,104 seats. This would leave three frequencies and some 2,679 seats available for allocation.

3.3 Cathay Pacific currently operates 28 passenger services utilising 8,684 seats per week and two freighter services.

4 Commission's consideration

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. If submissions are received about, or opposing, the allocation of capacity to a particular carrier, the Commission may also apply additional criteria in paragraph 5 of the Policy Statement.

4.2 The Commission notes that the start-up phase has been extinguished on the Hong Kong route with the allocation of 2,000 seats and five frequencies to Ansett on 24 September 1993.

4.3 Virgin Blue submitted that Hong Kong was one of the key long haul routes that could benefit from further competition. Virgin Blue considered that, while there would be rights for three additional services this would not be sufficient for it to start a sustainable and commercially viable operation. Virgin Blue also submitted that while there was a good chance that air services negotiations may be able to secure additional rights, there was no certainty in this outcome.

4.4 Virgin Blue requested that the Commission grant Qantas an interim (three year) determination for the allocation of the requested four services a week. Virgin Blue believed that this would provide a sufficient time period for it to develop a long-haul product and to identify if further capacity might become available. It considered that a three year allocation would also ensure the best competitive outcome for the market, while in the meantime not hindering the full utilization of Australia's allocated capacity.

4.5 Qantas responded there was no justification for restricting it to an interim allocation. While from Virgin Blue's perspective, such an outcome might give it flexibility, against a still indeterminate planning horizon, it has the effect for Qantas of introducing an element of doubt about services to be introduced in the Northern Winter scheduling period and for which a commitment has already been made.

4.6 Qantas submitted that there is no doubt about the future availability of capacity for services between Australia and Hong Kong. Qantas stated that both Governments have been receptive to carrier suggestions about the need for increases in Australia/Hong Kong capacity and have facilitated these through amendments to the air services arrangements. Furthermore, Qantas expects that within a three year time frame more than sufficient capacity to meet airline requirements would be agreed.

4.7 Qantas added that the additional capacity would provide Virgin with every opportunity to operate the level of capacity it desires without the need to impact on Qantas' planning certainty.

4.8 The Commission will not apply the paragraph 5 criteria in the Minister's Policy Statement in this case. It finds that, against the paragraph 4 criteria, the allocation of

capacity sought by Qantas would be of benefit to the public. However, the Commission needs to determine whether the public interest would be best served by issuing an interim determination, rather than a full five year determination as sought by Qantas. If the Commission were to accept Virgin Blue's request to make an interim determination it would have the effect of making the capacity available for allocation in three years, with applications and submissions to be considered against paragraph 4 criteria and possibly paragraph 5 criteria.

4.9 If, on the other hand, the Commission were to make the allocation for five years as requested by Qantas then there would be a rebuttable presumption in favour of the carrier seeking renewal. In this case the Commission must consider:

- (a) whether the carrier seeking renewal has failed to service the route effectively; and
- (b) whether the use of the capacity in whole or in part by another Australian carrier which has applied for that capacity would better serve the public having regard to the criteria set in paragraphs 4 and 5 of the Policy Statement.

4.10 The Commission has previously made several allocations on an interim basis. In this case the Commission must balance the benefits that may be derived from preserving potential scope for a future new entrant to introduce competition on the route, with the uncertainty created for Qantas over the continued operations of the four new services on the route.

4.11 As noted above, Qantas has submitted that it expects that within a three year time frame more than sufficient capacity to meet airline requirements would be agreed between the Australian and Hong Kong aviation authorities. Should additional capacity become available, the likelihood is that the Commission would, upon reviewing the interim determination, convert it to a full determination. The likelihood of additional capacity being available tends to act to minimise the uncertainty faced by Qantas.

4.12 An interim allocation provides scope for a viable amount of capacity to be available for a prospective new entrant to compete for, if no additional capacity is negotiated within the next two years.

4.13 The Commission concludes that an allocation to Qantas of four frequencies and 1300 seats per week on the Hong Kong route for a period of three years would be of benefit to the public.

5 Interim Determination allocating capacity on the Hong Kong route to Qantas ([2002] IASC 122)

5.1 The Commission makes an interim determination in favour of Qantas, allocating 1,300 seats and four frequencies per week for passenger services on the Hong Kong route.

5.2 The Determination is for three years from the date of this Determination and is subject to the following conditions:

- Qantas is required to utilise 1,017 seats and four frequencies from the end of November 2002 and fully utilise the capacity from 1 April 2003;
- only Qantas or another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity;
- neither Qantas nor another Australian carrier which is a wholly owned subsidiary of Qantas is 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 - Hong Kong 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 - Hong Kong air services arrangements.

Dated: 10 October 2002

Ross Jones
Chairman

Michael Lawriwsky
Member

Stephen Lonergan
Member