



Australian Government

International Air Services Commission

DECISION

Decision:	[2004] IASC 206
Variation of:	[2000] IASC 106, [2001] IASC 119, [2002] IASC 105, [2002] IASC 122 and [2003] IASC 107
The Route:	Hong Kong
The Applicant	Qantas Airways Limited (ACN 009 661 901) (Qantas)
Public Register File:	IASC/APP/200415

1 The application

1.1 On 6 August 2004, Qantas applied to vary a number of determinations allocating capacity on the Hong Kong route. The application followed changes in April 2004 to the air services arrangements between Australia and Hong Kong which altered the capacity entitlements available to Australian carriers, including the way those entitlements are expressed. Under the new arrangements, capacity for services between Sydney/Melbourne/Brisbane/Perth and Hong Kong is expressed in terms of frequencies, rather than seats and frequencies under the previous arrangements. Qantas requested that all references to seats in the determinations in question be deleted.

1.2 The Commission published a notice on 12 August 2004 inviting submissions about the application. No submissions were received. All public material supplied by the applicant is filed on the Register of Public Documents.

2 Delegate's assessment

2.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (the Act) and regulation 3A of the *International Air Services Commission Amendment Regulations 2003 (No.1)*, the delegate of the Commission considers the Qantas application.

2.2 When considering applications to vary determinations, the Commission (or its delegate) must decide whether the determinations, as varied, would be of benefit to the public. Under section 6.3 of the Minister's policy statement, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity and no submission is received about the application, only the criteria in paragraph 4 of the policy statement are applicable. Under paragraph 4, the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public.

2.3 Qantas has requested that the determinations be written in such a way as to remove any ambiguity concerning the manner in which the allocations may be used and to provide operational flexibility. The company is commencing a weekly B747 freighter service between Sydney and Hong Kong in August 2004, using an existing allocated frequency. The air services arrangements permit the designated airlines to freely convert and reconvert capacity for the operation of passenger services and all-cargo services between Hong Kong and Sydney/Melbourne/Brisbane/Perth on the basis of one passenger frequency for one all-cargo frequency or vice versa. There is therefore no impediment to the delegate agreeing to the Qantas request.

2.4 Qantas has also asked that the capacity under each determination be expressed to apply to services operated between Hong Kong and all cities in Australia. Under the revised air services arrangements, there are limits on the number of frequencies which can be operated between Hong Kong and Sydney, Melbourne, Brisbane and Perth. There is unlimited capacity available for allocation for services between Hong Kong and other points in Australia. The existing allocations already allow Qantas to serve any points in Australia. The delegate has no objection to the variation proposed by Qantas. The effect of an allocation in the terms sought by Qantas is that the frequencies allocated are counted against the capacity available for services between Hong Kong and Sydney, Melbourne, Brisbane and Perth. However, the capacity could be used, at Qantas' discretion, to serve other points in Australia.

2.5 The delegate, on behalf of the Commission, will make the variations to the determinations as requested by Qantas.

3 Decision [2004] IASC 206

3.1 In accordance with section 24 of the Act, the delegate, on behalf of the Commission, varies Determinations [2000] IASC 106, [2001] IASC 119, [2002] IASC 105, [2002] IASC 122 and [2003] IASC 107 which allocate capacity on the Hong Kong route by

(a) removing the following from Determination [2000] IASC 106

- from paragraph 3.2 “allocating 1800 seats of capacity per week to Hong Kong”
- from paragraph 3.3 “operate no more than seven frequencies utilising the 1,800 seats of capacity” and

replacing the deletion from paragraph 3.2 with

- “allocating seven frequencies per week of capacity with any aircraft type in each direction between any points in Australia and Hong Kong”

(b) removing the following from paragraph 3.2 of Determination [2001] IASC 119

- “allocating 4,433 seats and 14 frequencies per week for passenger services and one frequency per week for cargo services in each direction on the Hong Kong route” and

replacing it with

- “allocating 15 frequencies per week of capacity with any aircraft type in each direction between any points in Australia and Hong Kong”

(c) removing the following from paragraph 4.1 of Determination [2002] IASC 105

- “allocating 988 seats and five frequencies per week for passenger services” and

replacing it with

- “allocating five frequencies per week of capacity with any aircraft type in each direction between any points in Australia and Hong Kong”

(d) removing the following from Determination [2002] IASC 122

- from paragraph 5.1 “allocating 1300 seats and four frequencies per week for passenger services on the Hong Kong route” and
- from paragraph 5.2 “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”

replacing

- the deletion from paragraph 5.1 with “allocating four frequencies per week of capacity with any aircraft type in each direction between any points in Australia and Hong Kong”
- the deletion from paragraph 5.2 with “Qantas is required to fully utilise the capacity”

(e) removing the following from paragraph 3.1 of Determination [2003] IASC 107

- “allocating 600 seats and three frequencies per week in each direction between Australia and Hong Kong”

replacing it with

- “allocating three frequencies per week of capacity with any aircraft type in each direction between any points in Australia and Hong Kong”

Dated: 6 September 2004

Michael Bird
Executive Director
Delegate of the IASC Commissioners