



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2005] IASC 108
The Route: Korea
The Applicant: Qantas Airways Limited
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/200502

1 The application

1.1 On 3 August 2005, Qantas applied for an allocation of 687 seats per week of capacity on the Korea route. Qantas plans to operate a series of seasonal flights between Brisbane and Seoul over the period from 28 December 2005 to 5 February 2006. The services would be operated three times per week with B767-300 aircraft configured with 229 seats (25 business and 204 economy class). All material supplied by the applicant is filed on the Register of Public Documents.

1.2 The Commission published a notice on 9 August 2005 inviting other applications for the capacity. No applications were received.

2 Provisions of relevant air services arrangements

2.1 Under the Australia –Korea air services arrangements, the designated airlines of Australia may operate a total of 7,500 seats each way per week to and from Sydney, Melbourne, Brisbane and Perth to points in the Republic of Korea (Route 2, which applies to passenger services). The Register of Available Capacity shows that there are 7,000 seat per week remaining available for allocation.

3 Delegate's consideration

3.1 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.

3.2 Under paragraph 6.2 of the Minister's Policy Statement (No.5), of 19 May 2004, the Commission is required only to apply the criteria in paragraph 4 of the policy statement. Under paragraph 4, the use of entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. For an established international carrier such as Qantas, this means that there is public benefit arising from the use of the entitlements.

3.3 The delegate notes that Qantas intends utilising the capacity over only a six-week period to meet demand in the traditional New Year peak period. However, the delegate accepts that the services are proposed to operate during a period when demand is sufficient to justify their operation and infers that demand is currently inadequate for Qantas to operate services all year round.

3.4 The delegate notes that the Commission has dealt previously with an application for Qantas to operate capacity on a seasonal basis – in that case, on the Japan route (see Determination [2004] IASC 108). On that occasion, Qantas sought to operate the capacity only during the Northern Winter scheduling periods (six months of the year) and the Commission allocated the capacity only for those periods. This left the capacity available for allocation to other Australian carriers for the balance of the year.

3.5 The circumstances of the current application are similar in that seasonal use is proposed. However, it differs in two main respects from the earlier case. Firstly, Qantas proposes to utilise the capacity on the Korea for a six weeks period compared with six months in the earlier case. Secondly, in the Japan case, there was a very limited amount of capacity available for operation by Australian carriers. By contrast, on the Korea route, there is ample capacity available to meet the needs of other prospective Australian carriers for the foreseeable future. Over 6,300 seats per week would remain available, even after the allocation to Qantas of the capacity sought.

3.6 The delegate will allocate the capacity for those parts of the year in which Qantas proposes to operate services. However, the delegate will provide scope for the Commission to approve other periods, against the possibility that Qantas may wish to expand its operations during the course of the determination. Given the ample capacity remaining available to other carriers, the delegate does not see any problems created by the allocation of capacity for the short periods of the year that Qantas proposes to operate for. The determination will be for a period of five years.

3.7 The delegate considered whether it would be possible to allocate the capacity on a year-round basis in this case because there is ample capacity available and it would create maximum flexibility for Qantas in the exercise of the capacity. However, section 15(2)(c) of the Act requires the Commission to include in determinations a condition requiring the capacity to be fully used. It would be inconsistent with this provision for an allocation to be made which enabled year-round use of the capacity, without including a condition that the capacity be used on that basis. However, such a requirement would be inconsistent with the commercial plans of Qantas for the use of the capacity.

3.8 The delegate anticipates that any future proposals by Qantas or any other airline for use of capacity on a seasonal or other part-year basis would be considered against the circumstances applicable to the route in question, as was the approach in this case and in the earlier case on the Japan route.

4 Determination allocating capacity on the Korea route to Qantas ([2005] IASC 108)

4.1 In accordance with section 27AA of the Act, the delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating 687 seats per week on the Korea route for the periods between the beginning of the last week in December until the end of the first week in the following February, or for such other periods as approved by the Commission, during the period of the determination.

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

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 28 December 2005, 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 – Korea 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 - Korea air services arrangements.

Dated: 22 August 2005

Michael Bird
Executive Director
Delegate of the IASC Commissioners