



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2004] IASC 104
The Route: India
The Applicants: Qantas Airways Ltd (ACN 009 661 901) (Qantas) and Backpackers Xpress Pty Ltd (ACN 104 183 851) (Backpackers Xpress)
Public Register File: IASC/APP/200401

1 The applications

1.1 On 17 February 2004, Qantas applied for an allocation of 2,100 seats per week on the India route. In September 2004, Qantas plans to introduce three B747 services per week between Sydney and Mumbai and would require 1350 seats to operate these services with B747-300 aircraft with a seating configuration of 450 seats. The airline plans to add a further two B747 services per week. Qantas advised informally that fleet adjustments would be made to comply with the 2100 seat per week capacity limitation as the additional services were added. The timing of the introduction of these additional two services is uncertain - possibly as early as April 2005, but no later than October 2005, depending on market conditions and aircraft availability.

1.2 Also on 17 February 2004, Qantas applied for an allocation of seven services per week on the United Kingdom (UK) route. Qantas plans to commence three B747 services per week between eastern Australia and London in November 2004. Four additional flights are planned to be phased in during 2005, so that all the capacity sought would be fully utilised by November 2005. The introduction of the seven services would bring to 28 the total number of services operated by Qantas to London. Qantas advised that the intermediate points to be served would be decided at a later time. Qantas noted that timeslots to operate the services had been obtained at London's Heathrow airport. Qantas sought permission for British Airways to code share on the proposed services, under the terms of the Restated Joint Services Agreement (JSA) between the two airlines.

1.3 In response to the Qantas applications, the Commission published a notice on 23 February 2004 inviting other applications for all or any part of the capacity sought by Qantas. On 1 March 2004, an intention to apply for capacity on the UK and India routes was received from Backpackers Xpress. Applications from Backpackers Xpress were received on 24 March 2004.

1.4 Backpackers Xpress sought an allocation of three services per week on the UK route and an allocation of 2,100 seats per week on the India route. Backpackers Xpress

proposed to commence services from November 2004, using B747 aircraft. Backpackers also sought capacity on the Germany and Thailand routes. In its applications, Backpackers Xpress addressed both the paragraph 4 and 5 criteria in the Minister's policy statement.

1.5 The Commission published a notice on 30 March 2004 inviting submissions about the Qantas and Backpackers Xpress applications. Qantas was also invited by the Commission to elaborate on its original application by addressing the paragraph 5 criteria in the Minister's policy statement.

1.6 Submissions were received from Tourism Victoria (6 April 2004), British Arms International Backpackers (6 April 2004), Hotel Bakpak (8 April 2004) and Melbourne Airport (late April 2004). Qantas wrote to the Commission on 30 April 2004 providing a summary of claims against the paragraph 5 criteria on the India route. Backpackers Xpress responded to the Qantas claims in a letter of 26 May 2004.

1.7 Recognising that Backpackers Xpress had sought only three services per week of the seven sought by Qantas on the UK route, and there were no other applications, the Commission decided to separately consider Qantas' application in respect of the remaining four services on that route. On 1 April 2004, the Commission issued Determination [2004] IASC 102 allocating four services per week on the UK route to Qantas. This leaves the Commission to consider the competing applications from the two carriers for the remaining three services per week on the UK route, as well as the competing applications for 2,100 seats per week on the India route. As discussed under "Commission's consideration" below, the Commission has decided to defer until a later time further consideration of the UK capacity applications from Qantas and Backpackers Xpress. The Backpackers Xpress applications for capacity on the Germany and Thailand routes will also be the subject of later consideration by the Commission.

1.8 All public material supplied by the applicants and by submitters is filed on the Register of Public Documents. Commercial in confidence material provided by the applicants is filed on the Commission's Confidential Register.

2 Current services on the India route

2.1 There are currently no direct services on the India route. A number of Asian carriers provide connecting flights over Asian points between Australia and points in India. Connections are also available at Asian points with Qantas services to and from Australia.

3 Provisions of relevant air services arrangements and capacity available for allocation

3.1 The air services arrangements between Australia and India allow each Contracting Party to designate up to two airlines. Australian carriers are permitted to operate beyond India to points in the UK. The Register of Available Capacity shows

that there are 2,100 seats per week available for allocation to Australian carriers on the India route. The air services arrangements indicate that the Indian Government may have concerns about accepting the designation of Australian carriers which have a wholly-leased fleet of aircraft.

4 Characteristics of the Australia – India route

4.1 In the year ended 31 March 2004 traffic on the Australia – India route totalled approximately 232,000 passenger movements. Overall traffic levels grew by a substantial 20% over the previous corresponding period, with resident traffic growth at 23% outstripping solid growth of 17% in visitor numbers. The market is very evenly balanced between resident and visitor travel. The growth rate was strong in a year in which travel levels on many routes to Australia were affected adversely by the Iraq war and the SARS virus. India is now the 16th largest travel market for Australia, rising from 21st in 1998.

4.2 Details of the passenger movements on the route for the years ending 31 March 2003 and 2004 are summarised below.

AUSTRALIA - INDIA

MONTHLY OD TRAFFIC SUMMARY

LATEST YEAR ENDING DATA	MAR	MAR	PAX		% CHG
	2003	2004	EWEW		
	PAX	PAX	or OW		
TOTAL OD TRAFFIC	192,998	231,645	2,227	EWEW	20.0%
TOTAL VISITORS (ARR & DEP)	98,100	115,307	1,109	EWEW	17.5%
(Proportion of Total OD Traffic)	(50.8%)	(49.8%)			
TOTAL RESIDENTS (ARR & DEP)	94,898	116,337	1,119	EWEW	22.6%
(Proportion of Total OD Traffic)	(49.2%)	(50.2%)			
TOTAL ARRIVALS (VIS & RES)	103,267	122,882	2,363	OW	19.0%
TOTAL DEPARTURES (VIS & RES)	89,731	108,763	2,092	OW	21.2%

TOTAL VISITOR ARRIVALS	54,984	64,978	1,250	OW	18.2%
TOTAL RESIDENT DEPARTURES	46,614	58,433	1,124	OW	25.4%
SHORT TERM VISITOR ARRIVALS	45,136	48,512	933	OW	7.5%
SHORT TERM RESIDENT DEPARTURES	45,877	57,637	1,108	OW	25.6%

5 Summary of applicants’ claims against the paragraph 5 criteria

5.1 The claims of Backpackers Xpress and Qantas against the paragraph 5 criteria in the Minister’s policy statement are summarised below.

5.2 Qantas provided a significant amount of information in the preamble to its statement of claims. Qantas noted that it served India (via Singapore) until early 2002. Services had been withdrawn due to deteriorating market conditions and impaired financial performance on the route. Qantas is well advanced in finalising the permits and support services necessary for direct operations. Qantas has maintained its sales presence and agency relationships in India since suspending operations and has interline arrangements with a number of carriers. Qantas has retained a substantial proportion of the Australia – India market as a result. Qantas plans to use Sydney as the base for its India services, as the NSW/ACT region has the largest share of traffic to/from India and represents the area of longest stay for the Indian market. The airline can serve other States through its extensive network of domestic connections.

5.3 In its statement of claims, Qantas addressed arguments advanced by Backpackers Xpress in its original application. Backpackers Xpress, in its 26 May submission, in turn countered the Qantas claims concerning the Backpackers Xpress proposals.

Tourism benefits

Backpackers Xpress

5.4 Sales and marketing plans have been developed. Formal understandings have been reached with travel industry outlets which focus on backpacking and independent travel. Travellers in this demographic are prolific users of the internet and the Backpackers Xpress website will be a major tool for booking trips. There is potential

for Backpackers Xpress to integrate its services with other low cost carriers within Australia.

Qantas

5.5 The Indian origin market is experiencing solid growth. The operation by Qantas of five non-stop weekly services will provide substantial new capacity in the market. Currently most traffic is carried over four Asian gateways, predominantly Singapore, and the direct services will attract a proportion of this. Substantial new traffic will need to be generated to fill the B747s used by Qantas. Tourism Forecasting Council forecasts suggest strong growth in demand over the next three years. Qantas' direct services will offer reduced travelling time compared with existing indirect services between Australia and India. Qantas will offer competitive fares ex-India – details were provided confidentially to the Commission.

5.6 Mumbai is India's principal international gateway. It is well placed geographically to offer competitive one-stop flights to Sydney from other Indian cities. Domestic connections are available to all major cities in India. Qantas has entered into interline arrangements with a number of Indian carriers and transfer facilities at Mumbai are being improved. By contrast, Delhi experiences flight disruptions due to weather problems.

5.7 Qantas will use its existing infrastructure and distribution systems to sustain and expand visitor traffic to Australia. The effectiveness of this network is demonstrated by the share of India – Australia traffic the airline carries currently over Asian points. Qantas' major sales and administration office is located in Mumbai. Its Mumbai sales team covers more than 500 agents in the greater Mumbai area. Additional staff will be appointed with the commencement of services to handle airport and additional sales roles. Qantas has appointed General Sales Agents outside Mumbai to represent its interests more widely throughout India. It has also appointed GSAs in Nepal and Bangladesh. Qantas has well established relationships with key agents and expects to generate traffic in all market segments including business, leisure and students. Agents have access to Qantas flights through the major global reservation systems operating in India.

5.8 Qantas is finalising its advertising and promotional plans and expects to include promotional activity jointly with the ATC. In addition to inaugural service events, activities will include on-going advertising campaigns, sponsored visiting journalists and agents programs and familiarisation trips for major corporate clients.

5.9 The extensive Qantas domestic network will allow Indian origin traffic to visit more than one city in Australia, including on Jetstar flights. Passengers will also be able to stopover in one direction at an Asian point using Qantas flights to these cities, particularly Singapore which Qantas services from most Australian cities. Onward return carriage to India would be on Qantas' interline partners. Qantas' network of trans-Tasman flights would also meet the demands of Indian travellers wishing to include New Zealand in their itineraries.

5.10 Qantas argued that the Backpackers Xpress proposal involved selling Delhi predominantly as a stopover point for Europe – Australia traffic. Qantas expected that Backpackers Xpress would generate no traffic from India to Australia, is unknown in the Indian market and would limit sales of its services to internet bookings. Qantas argued that the Backpackers Xpress proposal would produce no tourism benefits to Australia from serving India. Qantas considered that the New Delhi services would be an inefficient use of the scarce India capacity entitlements.

Backpackers Xpress response to Qantas

5.11 Backpackers Xpress stated that it does intend to generate traffic from within India. It will contract a local General Sales Agent to market and sell the Backpackers Xpress product and to provide associated support services. Backpackers Xpress considers that Delhi is the tourist gateway into and out of India. It stated that Mumbai had previously failed for Qantas and Qantas has not stated any change of approach to that employed previously. Backpackers Xpress considers that the operational problems with Delhi presented by Qantas are exaggerated. Backpackers Xpress argued that Indian travellers would welcome the opportunity to travel to Bangkok enroute to Australia. Backpackers Xpress asked the Commission to give consideration to the fact that it wishes to use all of its capacity by November 2004, whereas Qantas would do so only by October 2005.

5.12 Backpackers Xpress said that it recognised the international student traveller group as a rapidly expanding one. It stated that over 30% of Indian arrivals into Melbourne were students. Backpackers Xpress expects to be able to attract significant custom from this segment. Backpackers Xpress also believes it can tap in to the young Indian middle class population.

Consumer benefits

Backpackers Xpress

5.13 An all economy seat plan and pricing structure. Integrated services to travellers including accommodation, domestic travel and adventure sports. Manchester is the chosen port. It has attractions through an environment unaffected by congestion, curfews and slot constraints. Manchester is well located for backpacker travel from Ireland, Scotland and the southern and midland regions. The airport is a hub for some low cost European carriers, enabling passenger transfer to/from mainland Europe. Delhi and Bangkok provide attractive stopover points.

5.14 On pricing, the aim is to achieve the lowest cost fares with open dated return tickets, providing flexibility to travellers. There will be a range of onboard services and entertainment, including live performers, cultural demonstrations, a bar and dvd hire. All of these represent innovative benefits to consumers that are likely to stimulate a response from incumbent carriers.

Qantas

5.15 Qantas' non-stop two-class services would provide Australian consumers with reduced travelling time, as no other carrier offers non-stop flights to India. Competitive fares would be offered (details provided confidentially to the Commission). Passengers would have choice of connections to Sydney and a range of behind-gateway services in India. Itineraries could also be constructed to allow a stopover in one direction in Asia if required.

5.16 Qantas has an established retail and wholesale distribution system within Australia, including its own outlets, agents, consolidators and tour wholesalers. The company is finalising its advertising and promotion plans. Some information on current plans was provided confidentially to the Commission.

5.17 Qantas travellers have the opportunity to join its frequent flyer scheme and benefit from earning points on the India services.

5.18 Qantas argued that the Backpackers Xpress proposal would not assist to develop the Australia – India local market. This appeared to be mainly focussed on inbound travel to Australia from UK/Europe. Outbound sales also appeared to be directed at travel to UK/Europe. Qantas, by contrast, would use its Mumbai services predominantly to focus on selling India, but to a limited extent for transport over India to UK/Europe, interlining with British Airways.

Backpackers Xpress response to Qantas

5.19 Backpackers Xpress criticised Qantas, on the grounds that Qantas itself proposes to offer through-travel packages to the UK/Europe – activity for which it criticises Backpackers Xpress.

Trade benefits

Backpackers Xpress

5.20 Freight activities will be subcontracted to a freight forwarding company which will be responsible for selling space and physical handling of freight. Melbourne and Manchester are high volume freight airports which will be to the advantage of Backpackers Xpress. As the aircraft will be operating on relatively short sectors, maximum freight capacity will be available for sale.

Qantas

5.21 Qantas argued that it is the only proponent providing freight uplift for India export and import. The volume of available Qantas freight capacity on the long Sydney-Mumbai sector would depend upon passenger loading and season of operation. Capacity would be sold through the company's network of freight forwarders and freight handled through its handling and storage facility at Sydney's Kingsford-Smith airport.

Backpackers Xpress response to Qantas

5.22 Backpackers Xpress says it will offer freight services from Melbourne at more competitive rates than Qantas.

Competition benefits

Backpackers Xpress

5.23 The introduction of another Australian carrier would diminish some of the conditions of market failure that are a consequence of monopoly Australian operations. The entry of Backpackers Xpress to the route would promote fairer pricing, better services and overall efficiency. None of the airlines currently operating on the route meet the needs of backpacker travellers in the way envisaged by Backpackers Xpress. The low cost market is not one that Qantas wants to serve on long haul routes and Backpackers Xpress will be able to compete effectively with Qantas in the market for backpacker travellers.

5.24 Backpackers Xpress will operate using a low cost model and its pricing will be very competitive relative to other carriers. The available price will be for all services regardless of season and not on a one-off or special sale basis. Tickets will be fully flexible and unconditional with open-ended use. Pricing has been derived from conservative assumptions. The proposed routing will give passengers increased choice of where and when to travel.

5.25 Backpackers Xpress will provide a travel experience rather than just flight service. It will involve a combination of services and facilities never before offered by any other carrier. It will thus be sharply differentiated from all other airline services. It will directly facilitate the wants and needs of the backpacking traveller.

5.26 All services will be operated by Backpackers Xpress. There will be no code sharing with other carriers.

Qantas

5.27 Qantas argued that intense competition already exists for traffic between Australia and India, citing 78 flights per week by major carriers which operate capacity over their home ports between the two countries. Together these Asian airlines carry nearly 70% of the total origin-destination traffic between India and Australia. Qantas argued that it needs to provide a marketable level of frequency of service and sufficient capacity to compete effectively. Qantas argues that Backpackers Xpress would not be a significant competitor in the India market, with its focus on Australia – UK/Europe traffic.

5.28 Qantas also argued that it would provide a two-class service catering to all market segments, and a non-stop operation, and would offer competitive pricing for India-Australia traffic.

Backpackers Xpress response to Qantas

5.29 Backpackers Xpress considers that the greatest competition benefits would flow from the introduction of services by a carrier which offers a product that differs from the incumbent carriers. Qantas would offer a similar product to that already offered by others. The Backpackers Xpress product would be innovative and differentiated from other carriers. It provides greater market appeal and price competitiveness than does the Qantas proposal. Allowing Qantas to hold some capacity unused until October 2005 would be in contradiction of the principles of competition and would deny immediate benefits to the consumer.

Industry structure

Backpackers Xpress

5.30 The Backpackers Xpress low cost model will provide a carrier that complements the existing and future domestic aviation sector. Backpackers Xpress will provide extensive employment and business opportunities within the Australian aviation industry and associated secondary and tertiary sectors. In the direct aviation sector there will be employment opportunities for pilots and flight attendants, engineers and technicians, ground and service crew and other customer and support staff. There will be business opportunities associated with fitting the aircraft and in providing aircraft, airport and technical infrastructure.

5.31 There will be flow on benefits for businesses in areas such as catering, cleaning and uniform design and supply.

5.32 Backpackers Xpress' services will provide on-carriage of passengers particularly to low cost Australian domestic carriers such as Virgin Blue and Jetstar.

Qantas

5.33 Qantas set out a range of Australian aviation industry benefits it claimed would follow from the resumption of flights to India. Qantas would return to service two of its parked B747-300 aircraft during 2005 and these would be used in part to operate the initial three weekly Mumbai services. The new services increase the efficiency of use of Qantas aircraft and provide incremental employment for Australian crews. The services would generate new traffic and hence revenue and divert traffic and revenue from foreign carriers, improving the company's financial position. There will also be opportunities to generate revenue through partnership arrangements with British Airways and Alitalia for Europe/Australia carriage over India. Qantas will also be able to generate revenue in the India-New Zealand and India-Fiji markets.

6 Summary of other submissions

6.1 British Arms International Backpackers supported the Backpackers Xpress proposals, arguing that the services would increase the number of backpackers visiting Australia and this would benefit all Australians. Backpackers would benefit from safe,

entertaining and friendly travel provided at low cost, meaning they would have more money available to spend in Australia.

6.2 Tourism Victoria supported the proposals from Backpackers Xpress, subject to financing, licensing approvals and capacity being available. Tourism Victoria encouraged discussions between the aeronautical authorities of Australia and India with the aim of securing additional rights.

6.3 Hotel Bakpak endorsed the Backpackers Xpress proposals. It argued that the proposed services were necessary for the continued growth of the backpacking industry and that the routes proposed to be serviced were of great importance. Hotel Bakpak stated that the backpacking industry continues to grow strongly, evidenced by increasing numbers of backpackers as a proportion of inbound tourism arrivals. Spend and length of stay by backpackers were also increasing. State and Federal tourism ministries and tourism bodies were giving greater recognition to the backpacker market.

6.4 Melbourne Airport supported the Backpackers Xpress proposals. It argued that the airline would offer additional capacity offering opportunities for Australian tourism and aviation. It would bring Australia into the low cost airline international market. The airline would bring needed growth to Melbourne airport. Victoria has suitable accommodation and transport infrastructure for the backpacker market, including a new Accor group property opened in April 2004. The additional capacity to Melbourne would also serve the tourism interests of Tasmania. Melbourne provides a major domestic hub for distribution of tourists to other destinations. In relation to India, Melbourne Airport noted that there are no direct services. India is identified as a key growth market by major tourism bodies. The limits on available bilateral capacity were noted and the desirability of expanding negotiated capacity expressed. Melbourne Airport also commented on the UK, Germany and Thailand markets. Finally, Melbourne Airport observed that Qantas was offering fewer international seats to Melbourne than in the past. In light of this, other airlines seeking to operate to Melbourne should be accommodated.

7 Commission's assessment

Introduction

7.1 Under paragraph 6.2 of the Minister's policy statement, where there are other applications or submissions received about or opposing a proposal, as in this case, the Commission may apply both the paragraph 4 criteria and the additional criteria in paragraph 5 of the policy statement. The Commission will apply both the paragraph 4 and 5 criteria in this case.

7.2 The new entrant provisions of the Minister's policy statement are not relevant to the India route as there is no incumbent carrier.

Paragraph 4 assessment

7.3 Under paragraph 4, the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals (4(b)(i)) and of implementing its application (4(b)(ii)) is of benefit to the public. Qantas is an established carrier and meets the paragraph 4 criteria.

7.4 Backpackers Xpress is a prospective Australian scheduled passenger carrier that has not yet operated air services. Backpackers Xpress plans are of considerable scale, involving a significant frequency of service with large capacity aircraft on long haul routes.

7.5 The Commission has stated on previous occasions that it scrutinises carefully the proposals and business plans of prospective passenger carriers, so that capacity is allocated only to carriers which can reasonably be expected to exercise it successfully, at least for a reasonable time period. This is particularly the case, as in the current situation, where capacity allocated to a new entrant would not be available to an established carrier which is readily able to use the capacity. Should a new entrant be allocated capacity and then be unable to commence operations, there would be an opportunity cost to the Australian community for the period that a capable carrier was unable to use that capacity. Another important issue for the Commission is that the commercial failure of a passenger carrier can have practical and financial consequences for passengers, both those who may be stranded overseas and those who have paid for tickets.

7.6 At the same time, the object of the Act places explicit focus on the public benefits that may be derived from competition in the provision of air services. The Commission therefore wishes to give prospective new applicants all reasonable opportunity to demonstrate that they are capable of implementing proposed services.

7.7 In order to obtain the approvals necessary to operate, a new entrant airline must be designated and obtain a licence from the Department of Transport and Regional Services (the Department) and safety approvals from the Civil Aviation Safety Authority (CASA) before it can commence services. The Commission makes its assessment of whether the applicant is reasonably capable of implementing its proposals by taking account of the applicant's experience, business plan and other information provided to the Commission by the applicant.

Necessary approvals

7.8 The Commission's normal practice when dealing with a potential new entrant airline is to seek advice from the Department as to whether it considers the airline to be reasonably capable of obtaining the necessary approvals. In this case, the Commission understands that Backpackers Xpress has not initiated a formal process for obtaining an international airline licence but has started the process for obtaining an aircraft operator's certificate. At this stage, the Commission expects that the Department would be unable to advise whether it considers Backpackers Xpress to be reasonably capable of obtaining the approvals necessary to operate.

Ability to implement proposals

7.9 The Commission has made a detailed assessment of Backpackers Xpress' application, including its business plan, and related submissions. The proposals are a major undertaking for a new entrant carrier. They involve large capital requirements and complex organisational and logistical arrangements.

7.10 The Commission concludes that Backpackers Xpress is not reasonably capable of implementing its application at this stage and therefore does not meet the paragraph 4 requirements .

7.11 The Commission considers that Backpackers Xpress would possibly have been able to meet the paragraph 4 requirements, given additional time. However, the Commission considers that it needs to reach a decision in relation to the India route at this time because Qantas proposes to start services in September 2004 and this constrains the decision making time frame. The Commission wants to satisfy itself whether the benefits from the Qantas proposal would outweigh those of Backpackers Xpress on paragraph 5 grounds in any case. If the Qantas' paragraph 5 claims are stronger, then there is clearly no justification in delaying matters to give Backpackers Xpress additional time in which to meet the paragraph 4 requirements.

Paragraph 5 assessment – India route

7.12 The Commission's comparative assessment of the respective proposals against the paragraph 5 criteria in the Minister's policy statement is set out below.

Tourism benefits

*The extent to which proposals will promote tourism to and within Australia.
The Commission should have regard to:*

- *the level of promotion, market development and investment proposed by each of the applicants, and*
- *route service possibilities to and from points beyond the Australian gateway(s) or beyond the foreign gateway(s)*

7.13 Qantas has established promotional and market development infrastructure and the ability to invest substantial funds in promoting the services. It has extensive agency arrangements throughout India. The carrier plans services dedicated to serving the India market directly and will therefore need to market aggressively and price competitively to sell the large volume of seats it will be bring into service. By contrast, Backpackers Xpress plans to use India principally as a stopover point for travellers between the UK/Germany and Australia. Its services to India also would operate via Bangkok, while those of Qantas would be the only direct Australia - India services available.

7.14 While Backpackers Xpress argues that it would in fact seek to sell India - Australia travel, the Commission is satisfied that this is not the principal intent of its services. Backpackers Xpress would have far fewer seats to dedicate to India-Australia

traffic and therefore less scope to bring Indian tourists to Australia. It also has comparatively small infrastructure and marketing capacity and limited agency support, with which to promote, market and sell services between India and Australia. It would rely heavily on internet sales. Qantas would provide some seats for through passengers between Australia and Europe, but this is very limited by comparison with the Backpackers Xpress proposals.

7.15 Qantas has an established network of Australian domestic and other international services. It therefore has scope to offer and market multi-destination travel for Indian visitors within Australia and beyond to countries such as New Zealand and Fiji. It can also offer packages involving a direct service in one direction and a return stopover in Asia via interline partners, for passengers wishing to take that option. Backpackers Xpress would need to enter into an agreement with another Australian domestic carrier to offer beyond gateway options to its passengers once in Australia. It would be unable to offer the same range of interline services behind its Indian gateway (Delhi) as Qantas could behind Mumbai, and this would constrain its ability to draw tourists from throughout the sub-continent.

7.16 Overall, the Commission considers that the Qantas proposal is far stronger against the tourism criteria than that of Backpackers Xpress.

Consumer Benefits

The extent to which proposals will maximise benefits to Australian consumers. The Commission should have regard to:

- *the degree of choice (including, for example, choice of airport(s), seat availability, range of product);*
- *efficiencies achieved as reflected in lower tariffs and improved standard of services;*
- *the stimulation of innovation on the part of incumbent carriers; and*
- *route service possibilities to and from points beyond the Australian gateway(s) or beyond the foreign gateway(s).*

7.17 Both carriers would add a major new choice of operator for Australian consumers. Currently there is no direct service between Australia and India, so most travellers fly via intermediate points in Asia. The Qantas proposal would add the greatest benefit to Australian consumers by being the only carrier in the market to operate direct to India. This represents a major benefit in terms of additional choice and time saving over existing routings through Asia. The time savings would be of particular benefit to the business market segment. Backpackers Xpress would not offer services to business travellers.

7.18 Both carriers would be likely to stimulate a price response from incumbent Asian carriers, but the extra dedicated capacity introduced by Qantas may provoke a greater response from those carriers looking to protect market share, especially for the

higher yielding business market. On the other hand, the Backpackers Xpress product is unique and provides a range of on-board services not previously available to Australian consumers. This is likely to be attractive to the backpacker market segment the airline is targeting.

7.19 Qantas offers attractive route service possibilities beyond its Australian gateway and beyond its Indian gateway. Backpackers Xpress is not able to easily match the Qantas network possibilities.

Trade Benefits

The extent to which proposals will promote international trade. The Commission should have regard to:

- *the availability of frequent, low cost, reliable freight services for Australian exporters and importers.*

7.20 The Qantas proposal offers greater public benefits against this criteria. It has the network and infrastructure to focus on the carriage of cargo. As with its passenger services, Qantas would have substantially more cargo space available for the freight market than would Backpackers Xpress. The provision of direct service offers an important new choice for Australian exporters and importers, especially in the carriage of time-sensitive cargo.

Competition Benefits

The extent to which proposals will contribute to the development of a competitive environment for the provision of international air services. The Commission should have regard to:

- *the need to develop strong Australian carriers capable of competing effectively with one another and the airlines of foreign countries;*
- *the number of Australian carriers using capacity on a particular route and the existing distribution of capacity.*
- *the extent to which applications are proposing to provide capacity on aircraft they will operate themselves as, in the long term, operation of capacity on own aircraft is likely to result in more competitive outcomes;*
- *the provisions of any commercial agreement between an applicant and another airline affecting services on the route but only to the extent of determining comparative competition benefit between competing proposals;*
- *any determinations made by the Australian Competition and Consumer Commission or the Australian Competition Tribunal in relation to a carrier operating or proposing to operate on all or part of the route; and*
- *any decisions on notifications made by the Australian Competition and Consumer Commission in relation to a carrier operating or proposing to operate on all or part of the route.*

7.21 There is currently no Australian carrier operating services on the India route, so there are no direct competition implications relative to other Australian operators. However, both carriers would contribute to a more competitive environment on the India route by providing competition for existing foreign carriers which serve India via Asian points. The Commission considers that Qantas would provide the greatest competitive benefits. It would provide a far greater number of end-to-end seats into the India market, as well as offering the only direct service between Australia and India. Backpackers Xpress would offer limited competitive gains by comparison, as the focus of its services is on the Australia – UK/Europe market.

7.22 Qantas has an established international presence, has infrastructure, marketing and sales arrangements already in place, and has strong commercial links with Indian carriers which give it reach into the wider Indian subcontinent and therefore an ability to compete for traffic behind its Indian gateway, as well as a major Australian domestic network allowing it to distribute passengers behind its Australian gateway of Sydney.

Industry Structure

The extent to which proposals will impact positively on the Australian aviation industry.

7.23 Both proposals would benefit the Australian aviation industry. The generation of additional traffic to and from Australia by either carrier would provide direct and indirect employment opportunities and industry development.

United Kingdom route

7.24 The Commission notes that neither Backpackers Xpress nor Qantas proposes to utilise capacity sought on the United Kingdom route until November 2004. The Commission will therefore defer until a later date a determination in relation to the competing applications for the three weekly services on that route.

Conclusion

7.25 The Commission finds public benefit on the India route is likely to be maximised by the allocation of all of the available capacity to Qantas. Accordingly, the Commission will allocate 2100 seats of capacity per week to Qantas on the India route.

7.26 The Commission is aware that allocating all of the India capacity to Qantas closes off the possibility of Backpackers Xpress operating via Delhi as proposed, at least until additional capacity is negotiated under the air services arrangements. However, the Commission notes that the Department of Transport and Regional Services is seeking air services discussions with the Indian aeronautical authorities as a matter of priority. The Department is aware of the competing applications for India capacity from Qantas and Backpackers Xpress. The Commission understands that an important objective in the discussions would be securing additional capacity for Australian carriers. If such capacity is secured, this may provide the opportunity for

Backpackers Xpress to again approach the Commission with a view to obtaining capacity on the India route, possibly prior to the time when it is in a position to commence operations on other routes.

7.27 In the interim, if Backpackers Xpress is able to meet the paragraph 4 criteria in relation to the other routes on which it has sought capacity, and so make the prospect of operations a reality, the airline could still operate via Bangkok to the UK and Germany as proposed, assuming capacity is allocated on the UK and other routes. As noted above, the Commission will defer issuing a draft determination in respect of the three services per week sought by Qantas and Backpackers Xpress on the UK route, and in relation to the capacity sought by Backpackers Xpress on the Germany and Thailand routes.

7.28 The Commission notes that Qantas plans to commence services on the India route in September 2004. Qantas has stated that it planned to introduce three services per week on the route from September 2004, but wished to have flexibility to introduce a further two services per week as late as October 2005, although the services might be operated as soon as April 2005 depending on market conditions, aircraft availability and other considerations. The Commission will provide Qantas the flexibility it has sought for the implementation of the capacity. The Commission will require a minimum of 1350 seats per week (the equivalent of three services per week using B747-300 aircraft configured to 450 seats) to be operated from 30 September 2004, and that the capacity be fully exercised from 1 November 2005. The determination will be for a period of five years from the date of the determination.

The draft determination

7.29 The Commission issued a draft interim (three year) determination ([2004]IASC104) on 7 June 2004 proposing to allocate all 2100 seats to Qantas, and to require all of the capacity to be used by April 2005. Qantas made a submission on 21 June 2004 in response to the draft determination. No submission was received from Backpackers Xpress or any other party.

7.30 Qantas argued in its submission that the determination should be for five years and that Qantas should be granted the commercial flexibility it had sought for the timing of the implementation of the capacity.

8 Determination allocating capacity on the India route to Qantas [2004] IASC 104

8.1 The Commission makes a determination in favour of Qantas, allocating 2,100 seats of capacity per week in each direction on the Australia – India route, in accordance with the Australia – India air services arrangements.

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

8.3 The determination is subject to the following conditions:

- Qantas is required to operate a minimum of 1350 seats per week by 30 September 2004 and to fully utilise the capacity by 1 November 2005;
- 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 – India 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 –India air services arrangements.

Dated: 29 June 2004

John Martin
Chairman

Stephen Lonergan
Member

Michael Lawriwsky
Member