

DECISIONS

DECISION:	IASC/DEC/9908
	IASC/DEC/9909
REVOCATION OF:	SCHEDULE 1 SECTION 54B
	DETERMINATION
VARIATION OF:	DETERMINATIONS LISTED IN
	COLUMN 2 OF THE SCHEDULE 1
	SECTION 54B DETERMINATION
THE APPLICANT:	QANTAS AIRWAYS LIMITED
	(ACN 009 661 901)
PUBLIC REGISTER FILE:	IASC/APP/99022

Background

1.1 On 1 March 1999, the Minister for Transport and Regional Services made a Determination under section 54B of the *International Air Services Commission Act 1992* (the Act) formally allocating to Qantas rights to operate certain services between countries other than Australia as negotiated with those countries (fifth freedom rights).

1.2 The section 54B Determination was made as a consequence of changes to the Act, which came into force on that date, giving the Commission jurisdiction over fifth freedom rights. The section 54B Determination was necessary to preserve Qantas' pre-existing entitlements.

1.3 Subsequently, the Commission explored with Qantas arrangements designed to streamline future management and renewal of both the fifth freedom rights and the third and fourth freedom rights to which they relate.

1.4 As a consequence Qantas has, by arrangement with the Commission sought replacement of the section 54B Determination with amendments to the underlying third and fourth freedom rights determinations as set out below.

The application

1.5 Qantas has applied to the Commission to:

- (1) revoke, pursuant to section 27AA of the Act, the Schedule 1 section 54B Determination of 1 March 1999; and
- (2) vary, pursuant to section 24 of the Act, each determination listed in Column 2 of the Schedule 1 section 54B Determination of 1 March 1999:

so that for the country to which each determination relates, Qantas is able to operate international air services over the route as described in Australia's bilateral arrangements, up to the capacity allocated to it in the determination subject to any conditions or restrictions mentioned in Column 3.

1.6 If an Australian carrier asks the Commission to revoke a determination, the Commission must make a decision revoking the determination (section 27AA(3)).

1.7 The legislative framework for varying determinations made under the Act provides that carriers to which a determination allocates capacity may, at any time, apply to the Commission, under section 21 of the Act, for the determination to be varied. Under section 24(1), the Commission must make a decision either confirming the determination or varying the determination as requested in the application.

1.8 Under section 24(2), the Commission must not make a decision varying the determination in a way that varies, or has the effect of varying, an allocation of capacity unless the Commission is satisfied that the allocation, as so varied, would be of benefit to the public.

1.9 The Commission notes that the Schedule 1 section 54B Determination as it relates to Indonesia allocates restricted beyond rights and that Column 2 of the Determination lists eight determinations for the Indonesia route. Following consultation with Qantas the Commission will allocate the restricted beyond rights by way of a variation to the determination IASC/DET/9813 listed in Column 2.

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1.10 In accordance with section 27AA of the Act, the Commission revokes the Schedule 1 section 54B Determination of 1 March 1999.

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1.11 In accordance with section 24(3) of the Act, the Commission varies each determination relating to Qantas Airways Ltd listed in Column 2 of the Schedule 1 section 54B Determination of 1 March 1999, with the exception of those determinations relating to Indonesia, so that for the country to which each determination relates, Qantas Airways Limited is able to operate international air services over the route as described in Australia's bilateral arrangements, up to the capacity allocated to it in the determination subject to any conditions or restrictions mentioned in Column 3.

1.12 Determination IASC/DET/9813 is varied by the Commission so that Qantas Airways Ltd is allocated over the entire Australian route beyond Indonesia, a total of 5.85 B747 equivalent services weekly in each direction with 9 frequencies weekly in each direction, of which 4 frequencies weekly in each direction must serve Denpasar.

Dated 17 May 1999

Russell Miller
Chairman

Michael Lawriwsky
Member

Stephen Lonergan
Member