

DETERMINATION

RENEWAL OF DETERMINATIONS A-15 AND B-9 ALLOCATING CAPACITY TO SOLOMON ISLANDS TO QANTAS AIRWAYS LIMITED (ACN 009 661 901)

Determination Number:
IASC/DET/9623

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Date: 6 December 1996

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1. The Determinations subject to renewal

1.1. On 22 July 1992, the Minister issued Determinations A-15 and B-9 (the determinations) which allocated the equivalent of 1.36 B737-200 services per week to the Solomon Islands to Qantas Airways Limited ACN 009 661 901 (Qantas). The determinations, issued under section 54 of the *International Air Services Commission Act 1992* (the Act) and effective from 1 July 1992, expire on 30 June 1997.

1.2. Determination B-9 was originally an interim determination but was renewed by the Commission on 14 December 1994 in favour of Qantas for five years from 1 July 1992.

2. The application

2.1. Under the Act, the Commission must start its consideration of the renewal of a determination at least 12 months before its expiry. In accordance with its procedures, on 20 May 1996, the Commission invited Qantas to express its interest (or otherwise) in renewing the determinations. On 24 May 1996, Qantas wrote to the Commission seeking a renewal of the determinations. On 21 June 1996, the Commission published a notice inviting submissions from any interested person about the renewal of the determinations, and other applications for an allocation of all or part of the capacity that is subject to renewal. The closing date for submissions and other applications was 19 July 1996. Qantas was the only applicant and no submissions were received.

2.2. All non-confidential material supplied by the applicant is filed on the Register of Public Documents. A copy of the Capacity Purchase/Sales Agreement between Qantas and Solomon Airlines is filed on the Commission's confidential register.

3. Qantas services to the Solomon Islands

3.1. A subsequent determination by the Commission increased Qantas' total capacity allocation to the equivalent of 1.5 B737 services per week between Australia and the Solomon Islands. Qantas operates its capacity via a Capacity Purchase/Sales Agreement with Solomon Airlines dated 1 September 1992 a copy of which has been provided to the Commission. Under this agreement, Qantas is entitled to 50% of the capacity on the following Solomon Airlines services;

- Brisbane-Honiara vv (3 B737 services per week).

3.2. Qantas has utilised and continues to fully utilise the relevant capacity.

3.3. In response to a request by the Commission for information in the context of this application for renewal, Qantas has provided the Commission with information concerning its operations on the route including the cities served, any operational or

regulatory problems encountered (of which according to Qantas there were none) and current published fares.

4. Provisions of relevant air services agreements

4.1. The Memorandum of Understanding (MOU) of 25 October 1994 between Australia and the Solomon Islands provides for the operation of international air services and the multiple designation of Australian carriers. The MOU also allows the designated airlines of each side to utilise their respective capacity entitlements by code share arrangements.

4.2. The current arrangements enable Australia's capacity entitlements to be operated by the equivalent of any B737 series aircraft. At the time of issuing Determination A-15 and B-9, the air services arrangements enabled Australian carriers to operate the equivalent of B737-200 series aircraft. A fresh determination will need to reflect the current Australia - Solomon Islands air services arrangements.

5. Legislative framework

5.1. Provision for the renewal of a determination is made in accordance with the *International Air Services Commission Act 1992*. The legislative framework for considering a renewal of a determination under the Act is set out in Attachment A.

5.2. Under section 11 of the Act, the Minister may make Policy Statements setting out matters relevant to the Commission's performance of its functions. The current Policy Statement (No.2) was issued by the Minister on 27 March 1995 and includes criteria to be applied by the Commission in considering the renewal of a determination.

5.3. The criteria applicable to assessing the renewal of a determination in circumstances where:

- the incumbent carrier is seeking renewal of a determination;
- the capacity is limited under a bilateral arrangement;
- the route is in the start-up phase; and
- there are no other applications for the capacity subject to renewal,

are those set out in Attachment B. These criteria apply to this application.

6. Commission's consideration of the renewal of the determinations

6.1. Under the Policy Statement, as set out in attachment B, there is a rebuttable presumption in favour of the carrier seeking the renewal, except where paragraph 8.1(a) applies.

6.2. Paragraph 8.1(a) does not apply in this case and therefore the Commission should allocate the capacity to the carrier seeking renewal unless the Commission is satisfied that both of the following criteria are met:

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

6.3. In this case Qantas is the only applicant, and there have been no submissions suggesting that Qantas has not served the route effectively. In light of this and the operational information supplied, the Commission has no reason to conclude that Qantas has not served the route effectively.

6.4. Accordingly, the Commission concludes that the renewal of Determinations A-15 and B-9 allocating capacity to the Solomon Islands to Qantas would be of benefit to the public.

7. Other issues

Terms and conditions of the fresh determination

7.1. Under section 19(3) of the Act, the Commission may make such changes (if any) to the terms and conditions included in the original determination as it is satisfied are warranted because of changes in circumstances since the original determination was made.

7.2. Since the original Section 54 Determination was made the Commission has had an opportunity to refine the terms and conditions which should apply to its determinations. In these circumstances the Commission believes that fresh determinations which renew original determinations should contain terms and conditions which are consistent with those applying to determinations currently issued by the Commission. These are set out below.

Period of the fresh determination

7.3. The Commission will grant Qantas a fresh determination for a period of 5 years effective from 1 July 1997.

Utilisation of the capacity

7.4. The Commission will specify that Qantas be required to fully utilise the capacity from 1 July 1997.

7.5. The Commission will specify that:

- the capacity is only to be used by Qantas; and
- Qantas may utilise the capacity to provide services jointly with Solomon Airlines subject to the limitations specified in this fresh determination.

Ownership and control of the carrier

7.6. The Commission's view is that the determination should include the usual limitations on changes in the ownership and control of Qantas. These are specified below.

8. Determination for renewal of Determinations A-15 and B-9 allocating to Qantas capacity on the Solomon Islands route (IASC/DET/9623)

8.1. The Commission finds a renewal of Determinations A-15 and B-9 allocating capacity to Qantas on the Australia - Solomon Islands route would be of benefit to the public.

8.2. The Commission makes a fresh determination in favour of Qantas, allocating 1.36 B737 equivalent services per week in each direction between Australia and the Solomon Islands under the Australia - Solomon Islands Memorandum of Understanding.

8.3. The determination is for 5 years from 1 July 1997.

8.4. The determination is subject to the following conditions:

- Qantas is required to fully utilise the allocated capacity from 1 July 1997;
- only Qantas is permitted to utilise the capacity;

- Qantas may use the capacity to provide services jointly with Solomon Airlines in accordance with:
 - the Capacity Purchase/Sales Agreement of 1 September 1992 between Qantas and Solomon Airlines as extended from time to time in accordance with its terms or as varied only in relation to the charges to be levied under Article 2 or in relation to scheduling;
 - variations to the Capacity Purchase/Sales Agreement (other than in relation to the charges to be levied under Article 2 or in relation to scheduling), subject to the prior approval of the Commission; or
 - any new joint service arrangements between Qantas and Solomon Airlines for operations on the Australia - Solomon Islands route whether or not it replaces the existing Agreement, with the prior approval of the Commission;

and in any case, in accordance with this determination,

- to the extent that the capacity is used to provide joint services with Solomon Airlines:
 - Qantas must price and sell its services on the routes independently;
 - Qantas must not share or pool revenues under the Capacity Purchase/Sales Agreement;
 - Qantas must take all reasonable steps to ensure that passengers are informed, at the time of ticket reservation, of the carrier actually operating the flight;
- 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 - Solomon Islands Memorandum of Understanding 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 - Solomon Islands
Memorandum of Understanding.

Dated: 6 December 1996

James K Bain
Chairman

Brian L Johns
Member

Russell V Miller
Member

A. Legislative Framework

1. Under subsection 17(1) of the Act, the Commission must start its consideration of the renewal of a determination at least 12 months before the end of the period during which the determination is in force.
2. Under subsection 17(2) of the Act, before starting its consideration, the Commission must, by notice, invite submissions about the renewal.
3. Under subsection 17(3), any person may make submissions to the Commission about the renewal.
4. Under subsection 8(1), the Commission may, at any time while a determination is in force, make a fresh determination allocating capacity to which the original determination relates.
5. Under subsection 8(2), the fresh determination:
 - (a) must make the same allocation of capacity as the original determination unless:
 - (i) the Commission is satisfied that that allocation is no longer of benefit to the public; or
 - (ii) the original determination is an interim determination; and
 - (b) comes into force immediately after the end of the period during which the original determination was in force.
6. Under subsection 8(3), if the fresh determination does not make the same allocation of capacity as the original determination, it must not make a different allocation of capacity unless the Commission is satisfied that that allocation would be of benefit to the public.
7. In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the Policy Statement dated 27 March 1995 made under section 11 of the Act. The criteria applicable to assessing benefit to the public for the purposes of renewal of determinations are those contained in paragraph 8 of the Policy Statement.
8. Subsection 19(1) of the Act relates to the contents of determinations made under section 8 of the Act. Subsection 19(2) specifies the period during which the determination is to be in force.
9. Under subsection 19(3), in including terms and conditions in the determination, the Commission may make such changes (if any) to the terms and conditions included in

the original determination (including adding or deleting terms and conditions) as it is satisfied are warranted because of changes in circumstances since the original determination was made.

10. Section 20 relates to notifications of determinations.

B. Relevant criteria under paragraphs 6 and 8 of the Policy Statement

Paragraph 6.1 requirements

6. CRITERIA APPLICABLE IN PARTICULAR CIRCUMSTANCES

Capacity not limited

6.1 In circumstances where capacity is not limited under a bilateral arrangement, only the criteria in paragraph 4 are applicable.

Paragraph 8 requirements

8. RENEWAL OF DETERMINATIONS

8.1 Subject to paragraph 6.1, the criteria for assessing the benefit to the public for the purposes of renewal of determinations, other than interim determinations, are as set out below.

(a) During the start-up phase on the route:

- the start-up phase allocation criteria set out in paragraph 7 apply in relation to that part of the capacity which is reasonably necessary for a level of scheduled international passenger services necessary to permit the development of efficient, commercially sustainable operations; and
- the criteria set out in paragraph 8.2 reflecting a rebuttable presumption in favour of the carrier seeking renewal apply to the balance of the capacity.

(b) After the start-up phase on the route, the criteria set out in paragraph 8.2 reflecting a rebuttable presumption in favour of the carrier seeking renewal apply.

8.2 Where the rebuttable presumption in favour of the carrier seeking renewal applies, the criteria for assessing benefit to the public are:

- (a) whether the carrier seeking renewal has failed to service the route effectively; and
- (b) whether 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 out in paragraph 4 and paragraph 5,

and the Commission should allocate the capacity to the carrier seeking renewal unless both of those criteria are met, in which case all or part of the capacity can be reallocated.