

DETERMINATION

RENEWAL OF DETERMINATIONS A-14, B-8 AND IASC/DET/9306 ALLOCATING CAPACITY ON THE SINGAPORE ROUTE TO QANTAS AIRWAYS LIMITED (ACN 009 661 901)

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1. The Determinations subject to renewal

1.1. On 22 July 1992, the Minister issued Determinations A-14 and B-8 which allocated the equivalent of 32.7 B747 services per week to Singapore 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. On 23 March 1993 the Commission issued Determination IASC/DET/9306 which allocated the equivalent of 7.5 B747 services per week to Singapore to Qantas. That determination, issued under section 7 of the Act, expires on 22 March 1998.

2. The applications

2.1. The Act requires the Commission to commence its consideration of the renewal of a determination at least 12 months before that determination is due to expire. In accordance with its procedures, on 20 May 1996, the Commission invited Qantas to express its interest (or otherwise) in renewing Determinations A-14 and B-8. On 24 May 1996, Qantas wrote to the Commission seeking a renewal of the determinations.

2.2. 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 other submissions were received.

2.3. Similarly, on 6 December 1996 the Commission invited Qantas to express its interest (or otherwise) in renewing Determination IASC/DET/9306. On 11 December 1996, Qantas wrote to the Commission seeking the renewal of the determination. On 9 January 1997, the Commission published a notice inviting submissions from any interested person about the renewal of Determination IASC/DET/9306, 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 23 January 1997. Qantas was the only applicant and no other submissions were received.

2.4. All material supplied by the applicant was non-confidential and is filed on the Register of Public Documents.

3. Qantas services to Singapore

3.1. Qantas has been allocated the equivalent of 41.85 B747 services per week to Singapore as follows:

Determination/Decision	Capacity allocated (B747 equivalent units)
A-14	30.70
B-8	2.00
IASC/DET/9306	7.50
IASC/DET/9609	1.45
IASC/DEC/9703	0.20
Total	41.85

3.2. In response to a request by the Commission for information in the context of these applications for renewals, Qantas has provided the Commission with information concerning its operations on the route including the cities served and any operational or regulatory problems encountered (of which according to Qantas there were none).

3.3. Qantas currently operates a total of 54 services per week to Singapore as follows:

Frequency	Aircraft type	B747 units of capacity	Route
7	B747	7.00	SYD-MEL-LON via SIN
7	B747	7.00	SYD-MEL-FRA via SIN
7	B747	7.00	BNE-SIN
7	B747 SP	5.25	SYD-CGK-SIN
3	B767-300	1.80	SYD-KUL-SIN
3	B767-300	1.80	SYD-SIN-BOM
7	B767-300	4.20	PER-SIN-HKG
4	B767-300	2.40	ADL-SIN
6	B767-300	3.60	CNS-DRW-SIN
3	B767-300	1.80	MEL-DPS-SIN
Total 54		41.85	

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

3.5. The Commission notes that Qantas and British Airways provide a total of 61 services per week and that their competitors provide a total of 57 services per week. The number of services operated by each competitor is:

Airline	Services per week
Singapore Airlines	46
Gulf Air	4
Lauda Air	3
Air India	2
Egyptair	2
Total	57

3.6. Qantas operates its services to Singapore in accordance with the Joint Services Agreement (JSA), a broad ranging commercial agreement which it has with British Airways. The JSA did not exist at the time Determinations A-14 and B-8 were issued by

the Minister and Determination IASC/DET/9306 was issued by the Commission. It covers matters such as co-ordination of operations, scheduling, revenue sharing and the joint use of facilities (eg. ticket offices, airport lounges) but, according to Qantas, does not involve code-share services at present.

3.7. Qantas made application to the (then) Trade Practices Commission (TPC) for authorisation of the JSA. Authorisation is only available where the applicant can establish that public benefits arise from the agreement which outweigh any public detriment caused by likely lessening of competition. An authorisation granted by the TPC immunises the agreement from proceedings under the Trade Practices Act only.

3.8. On 12 May 1995 the TPC issued a determination and concluded that while there were anti-competitive elements associated with the JSA, these were outweighed by public benefits arising from it, and that authorisation should be given to the airlines to implement the agreement, subject to certain conditions.

3.9. Normally the Commission analyses joint service agreements against the Commission's draft Joint Service Assessment criteria. However, the joint service agreements analysed by the Commission are normally route specific agreements. In the case of the JSA, it is a broad ranging commercial agreement, a review of which was undertaken by the then TPC utilising public benefit criteria not dissimilar to those with which the Commission works.

3.10. Rather than undertake a further broad assessment of the JSA along the lines of the TPC authorisation, the Commission considers the impact of the JSA on each relevant route as the need arises.

3.11. Qantas has provided the Commission with a copy of the JSA, which is dated 19 June 1995. On 4 December 1996 Qantas confirmed that there have been no material changes to the JSA subsequent to 19 June 1995.

3.12. In relation to the Australia - Singapore route there have been no submissions to the Commission suggesting that as a result of the JSA Qantas has not serviced the route effectively.

3.13. Qantas has provided the Commission with details of a number of initiatives at Singapore which are a result of the JSA. These initiatives include improved network connections at Singapore, increased marketing efforts by combining resources, new airport lounges at Singapore Airport (including extended opening hours), improved check-in facilities dedicated to Qantas and British Airways, some staff savings and the establishment of joint telephone sales and travel centres. On the other hand, British Airways and Qantas do not compete on price on this route.

4. Provisions of relevant Air Services Agreements

4.1. The Australian - Singapore Air Services Agreement (ASA) and Memorandum Of Understanding (MOU) provide for the transport of passengers and cargo in accordance with agreed capacity entitlements. The ASA provides for multiple designation.

4.2. Current capacity entitlements for Australian carriers under the Australia - Singapore ASA are 46.83 B747 equivalent units.

4.3. In relation to the fifth freedom sectors operated by Qantas to/from Singapore, the Australian - Singapore MOU permits Australian carriers to exercise full fifth freedom traffic rights Singapore - Jakarta and Singapore - Kuala Lumpur but only own-stopover rights on three services per week Singapore - Denpasar (this means that Qantas may only pick up traffic in Denpasar and carry it to Singapore provided that Qantas carried those passengers to Denpasar in the first place).

5. Legislative framework

5.1. 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 not in the start-up phase; and
- there are no other applications for the capacity subject to renewal,

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

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

6.1. Under the Policy Statement, there is a rebuttable presumption in favour of the carrier seeking the renewal, except where paragraph 8.1(a) applies. However, as the Singapore route is no longer in the start-up phase the criteria in paragraph 8.1(a) do not apply in this case.

6.2. The criteria for assessing benefit to the public where the rebuttable presumption in favour of the carrier seeking renewal applies are specified in paragraph

8.2, which states that 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 the 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. There have been no submissions suggesting that Qantas has not serviced the route effectively. In particular, the Commission has received no submissions suggesting that the JSA has had an adverse impact on Qantas servicing the route. Furthermore, Qantas has developed the route by expanding services. In the light of those matters and the operational information supplied, the Commission has no reason to conclude that Qantas has not serviced the route effectively.

6.4. Accordingly, the Commission concludes that the renewal of Determinations A-14, B-8 and IASC/DET/9306 allocating capacity on the Australia - Singapore route to Qantas would be of benefit to the public.

7. Other issues

Terms and conditions of the fresh determinations

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 determinations

7.3. The Commission will grant Qantas a fresh determination renewing Determinations A-14 and B-8 for a period of five years effective from 1 July 1997. It will also grant Qantas a fresh determination renewing Determination IASC/DET/9306 for a period of five years effective from 23 March 1998.

Utilisation of the capacity

7.4. The Commission will specify that Qantas be required to fully utilise the capacity from the date of effect of the determinations.

7.5. Consistent with sub-section 15(2)(e) of the *International Air Services Commission Act 1992* a carrier cannot use allocated capacity by providing services jointly with any other carrier without the prior approval of the Commission. For this purpose, the Commission considers that joint services include *inter alia* code-sharing, seat exchanges, block space arrangements and revenue pooling.

7.6. The Commission has examined the JSA between Qantas and British Airways and sought legal advice as to whether it represents the provision of air services jointly. On the basis of information available to it, the Commission has formed the view that the current operations by Qantas constitute a joint service for the purposes of sub-section 15(2)(e) of the Act.

7.7. The introduction of the JSA therefore constitutes, pursuant to section 20(3) of the Act, a change in circumstances sufficient to warrant a change to the terms and conditions relating to joint services included in the original determinations.

7.8. The Commission will specify that Qantas may only use the capacity:

- by operating its services alone; or
- by providing services jointly with British Airways subject to the condition that those services are operated under the joint services agreement:
 - as authorised under the *Trade Practices Act 1974* by the Trade Practices Commission in its determination of 12 May 1995 for so long as that authorisation remains in effect (including any subsequent amendments authorised under that Act); or
 - otherwise authorised by the Australian Competition and Consumer Commission; or
 - as approved by the Commission.

Ownership and control of the carrier

7.9. The Commission's view is that the determinations 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-14 and B-8 allocating capacity on the Singapore route to Qantas (IASC/DET/9712)

8.1. The Commission finds a renewal of Determinations A-14 and B-8 allocating capacity on the Australia - Singapore route to Qantas would be of benefit to the public.

8.2. The Commission makes a fresh determination in favour of Qantas, allocating 32.7 B747 equivalent services per week in each direction between Australia and Singapore under the Australia - Singapore Air Services Agreement.

8.3. The determination is for five 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 British Airways subject to the condition that those services are operated under an agreement:
 - as authorised under the *Trade Practices Act 1974* by the Trade Practices Commission in its determination of 12 May 1995 for so long as that authorisation remains in effect (including any subsequent amendments authorised under that Act); or
 - otherwise authorised by the Australian Competition and Consumer Commission; or
 - as approved by the Commission.
- and in any case, in accordance with this determination,
- 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 - Singapore Air Services Agreement 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 - Singapore Air Services Agreement.

9. Determination for renewal of Determination IASC/DET/9306 allocating capacity on the Singapore route to Qantas (IASC/DET/9713)

9.1. The Commission finds that a renewal of Determination IASC/DET/9306 allocating capacity on the Australia - Singapore route to Qantas would be of benefit to the public.

9.2. The Commission makes a fresh determination in favour of Qantas, allocating 7.5 B747 equivalent services per week in each direction between Australia and Singapore under the Australia - Singapore Air Services Agreement.

9.3. The determination is for five years from 23 March 1998.

9.4. The determination is subject to the following conditions:

- Qantas is required to fully utilise the allocated capacity from 23 March 1998.
- only Qantas is permitted to utilise the capacity;
- Qantas may use the capacity to provide services jointly with British Airways subject to the condition that those services are operated under an agreement:
 - as authorised under the *Trade Practices Act 1974* by the Trade Practices Commission in its determination of 12 May 1995 for so long as that authorisation remains in effect (including any subsequent amendments authorised under that Act); or
 - otherwise authorised by the Australian Competition and Consumer Commission; or
 - as approved by the Commission.

and in any case, in accordance with this determination,

- 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 - Singapore Air Services Agreement 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 - Singapore Air Services Agreement.

Dated: 14 March 1997

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.