

DETERMINATION

DETERMINATION: IASC/DET/9812
THE ROUTE: FIJI
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901)
PUBLIC REGISTER FILES: IASC/APP/98006
IASC/COM/92005

1. The application

1.1. On 17 April 1998 an application was received from Qantas Airways Limited (Qantas) for an allocation of freight capacity between Australia and Fiji. Qantas is seeking an allocation of 50 tonnes of freight capacity per week in each direction between Australia and Fiji. Qantas proposes to use the capacity on five existing dedicated cargo services it operates between Australia and the United States which proceed via Fiji.

1.2. The Commission published a notice inviting other applications for all or any part of the capacity and submissions from interested parties about the Qantas application. No applications or submissions were received.

2. Provisions of relevant Air Services Agreements

2.1. The Australia - Fiji Air Services Agreement of 24 March 1982 and the Memorandum of Understanding (MOU) of 10 March 1998 provide for designated carriers to operate services in accordance with agreed capacity entitlements.

2.2. The MOU provides that the designated airlines of each country may carry up to 50 tonnes of freight capacity per week in each direction between Australia and Fiji using dedicated freighter aircraft.

3. Commission's assessment of the applicant's claims

3.1. Allocations of capacity are made by the Commission in accordance with the *International Air Services Commission Act 1992* (the Act), and the Minister's Policy Statement (No 3 of 23 April 1997) which was issued under section 11 of Act.

3.2. The Act and Policy Statement provide that if there are no competing applications or submissions the relevant criteria for the Commission in considering an application for capacity are whether the applicant is reasonably capable of both obtaining the necessary approvals to operate on the route and implementing its proposal.

3.3. Qantas is an established international carrier which has the technical and financial resources to implement its proposal. The Commission concludes that Qantas is reasonably capable of obtaining the necessary approvals and implementing its proposal and that the allocation to Qantas of 50 tonnes of freight capacity per week in each direction between Australia and Fiji would be of benefit to the public.

4. Other issues

4.1. The Commission notes that Qantas proposes to commence utilisation of the capacity using existing services and will fully utilise the capacity within seven days of the Commission's determination.

4.2. Qantas has sought a determination for five years from the date of the determination. The Commission will make such a determination.

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

5. Determination allocating shelf capacity on the Fiji route to Qantas (IASC/DET/9812)

5.1. The Commission finds that an allocation of freight capacity to Qantas on the Australia – Fiji route as sought would be of benefit to the public.

5.2. The Commission makes a determination in favour of Qantas, allocating 50 tonnes per week in each direction between Australia and Fiji, in accordance with the Memorandum of Understanding between Australia and Fiji of 10 March 1998.

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

5.4. The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity;
- Qantas is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- 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 - Fiji 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 - Fiji Air Services Agreement.

Dated: 18 May 1998

James K Bain
Chairman

Russell V Miller
Member

Michael L Lawriwsky
Member