

DETERMINATION

DETERMINATION: IASC/DET/9818
THE ROUTE: FRANCE (ROUTE 1)
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901)
PUBLIC REGISTER FILES: IASC/APP/98019
IASC/COM/92005

1. The application

1.1. On 5 August 1998 an application was received from Qantas Airways Limited (Qantas) for an allocation of capacity between Australia and France (Route 1). Qantas is seeking an allocation of three units of capacity per week in each direction. Qantas proposes to operate three B747-400 services weekly between Sydney and Paris via Singapore, commencing 26 October 1998.

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 – France Air Services Agreement of 13 April 1965 and the Memorandum of Understanding (MOU) of 6 December 1996 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 operate up to the equivalent of three units of capacity on Route 1 (metropolitan France) in each direction between Australia and France. One unit of capacity is deemed to be an aircraft of 400 seats or more.

2.3. The MOU differentiates between code share and non-code share services. The capacity entitlements for code share operations is a maximum of 400 one-way seats daily on a yearly basis, and Qantas currently has an allocation of 150 code share seats (IASC/DET/9723) which it intends to retain.

2.4. The Commission notes that there are currently no allocations of non-code share capacity to France. Therefore, all three units of capacity are available for allocation.

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 three units of capacity per week in each direction between Australia and France would be of benefit to the public.

4. Other issues

4.1. The Commission notes that Qantas proposes to commence operating and fully utilise the capacity from 26 October 1998.

4.2. 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 France route to Qantas (IASC/DET/9818)

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

5.2. The Commission makes a determination in favour of Qantas, allocating three units of capacity per week in each direction between Australia and France, in accordance with the Memorandum of Understanding between Australia and France of 6 December 1996.

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 – France 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 – France Air Services Agreement.

Dated: 8 September 1998

Russell V Miller
Chairman

Michael L Lawriwsky
Member

Stephen Lonergan
Member