

DETERMINATION

DETERMINATION: IASC/DET/9819
THE ROUTE: FRANCE (ROUTE 2 – FRENCH POLYNESIA)
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901)
PUBLIC REGISTER FILES: IASC/APP/98014
IASC/COM/92005

1 The application

1.1 On 23 July 1998, an application was received from Qantas Airways Limited (Qantas) for an allocation of capacity between Australia and France (Route 2 - French Polynesia). Qantas is seeking an allocation of 0.5 units of capacity per week in each direction between Australia and French Polynesia to enable it to increase its B767 services on the route from three to four per week with effect from 15 December 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 Memoranda of Understanding (MOU) of 6 December 1996 and 20 February 1997 provide for designated carriers to operate services in accordance with agreed capacity entitlements.

2.2 Under the MOU, the designated airlines of Australia are entitled to operate up to 4.5 units of capacity per week in each direction between Australia and French Polynesia. Capacity is defined in terms of an aircraft substitution formula based on the number of seats utilised, with 400 seats and above equal to one unit of capacity.

2.3 Qantas, the only Australian carrier on the route, currently has an allocation of 1.5 units of capacity per week. Three units of capacity per week remain unallocated.

3 Commission's assessment

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 and is already operating on the route. The Commission concludes that Qantas is reasonably capable of obtaining the necessary approvals and of implementing its proposal and that the allocation to Qantas of 0.5 units of capacity per week in each direction between Australia and French Polynesia would be of benefit to the public.

4 Other issues

4.1 Qantas proposes to commence operating the capacity from 15 December 1998. The Commission will require Qantas to fully utilise the capacity from 15 December 1998.

4.2 The Commission will make a determination for five years from the date of the 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 France (Route 2 – French Polynesia) route to Qantas (IASC/DET/9819)

5.1 The Commission finds that an allocation of capacity to Qantas on the Australia – France (Route 2 – French Polynesia) route as sought would be of benefit to the public.

5.2 The Commission makes a determination in favour of Qantas, allocating 0.5 units of capacity per week in each direction between Australia and French Polynesia under the Australia – France Air Services Agreement.

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 from no later than 15 December 1998 or from such other date approved by the Commission;
- only Qantas is permitted to 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