

DECISION

VARIATION OF CAPACITY ON THE TAIWAN ROUTE ALLOCATED TO QANTAS LIMITED (ACN 003 613 465)

Decision Numbers:
IASC/DEC/9715

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Date: 30 June 1997

Members:

James K Bain
Chairman

Brian L Johns
Member

Russell V Miller
Member

1. The application

1.1. On 2 February 1995 the Minister made a Determination pursuant to Section 54A of the *International Air Services Commission Act 1992* allocating capacity on the Taiwan route to Australia Asia Airlines Limited ACN 003 613 465. The Determination allocated a total of 5.5 co-efficients of capacity on the Taiwan route to Australia Asia Airlines Limited.

1.2. On 11 June 1996 Australia Asia Airlines Limited changed its name to Qantas Limited ACN 003 613 465 (Qantas).

1.3. Due to market conditions, Qantas reduced its services on the route from five B747-SP flights per week to four B767-300 flights per week. The changed services require 3.4 co-efficients of capacity rather than 5.5 co-efficients. Accordingly, on 16 May 1997 Qantas applied to the Commission to vary the Determination by returning to the shelf 2.1 co-efficients of capacity.

2. Legislative framework

2.1. The legislative framework for varying determinations made under the *International Air Services Commission Act 1992* is set out in Attachment A.

2.2. Applications for variations are made pursuant to section 21 of the Act.

2.3. If an Australian carrier applies for a variation of a determination it holds, and the only effect of the variation would be to reduce the capacity allocated to the carrier, the Commission is not required to invite submissions (section 22(1A)) and must vary the determination as requested in the application (section 24(3)).

3. Decision (IASC/DEC/9715)

3.1. In accordance with section 24(3) of the Act, the Commission varies the Determination made by the Minister on 2 February 1995 by replacing the reference to “5.5 co-efficients” with “3.4 co-efficients”.

3.2. The text of the Determination as amended is set out in Attachment B.

Dated: 30 June 1997

James K Bain
Chairman

Brian L Johns
Member

Russell V Miller
Member

A. Legislative framework

1. Under section 21 of the *International Air Services Commission Act 1992* (the Act), an Australian carrier to whom a determination allocates capacity may at any time apply to the Commission for the determination to be varied.
2. Section 10(2) of the Act requires the Commission to conduct a review of a determination if the Australian carrier to whom the determination allocates capacity applies to the Commission under section 21 for the determination to be varied.
3. Under section 22(1A) of the Act, the Commission is not required to invite submissions about the review of a determination if:
 - (a) the review is made as a result of an application (other than a transfer application) by the carrier to which the capacity was allocated requesting a variation of the determination; and
 - (b) the only effect of the variation would be to reduce the capacity allocated to the carrier.
4. Section 24 of the Act relates to decisions on applications for variations. Under section 24(2), subject to section 24(3), the Commission must not make a decision varying the determination in a way that varies, or has the effect of varying, an allocation of capacity unless the Commission is satisfied that the allocation, as so varied, would be of benefit to the public.
5. Under section 24(3), the Commission must vary the determination as requested in the application if:
 - (a) an Australian carrier to which a determination allocates capacity applies in accordance with section 21 for the determination to be varied; and
 - (b) the only effect of the variation would be to reduce the capacity allocated to the carrier.
6. Section 4(1) of the Act states that a reduction of capacity includes a reduction to nil capacity.
7. Section 27 of the Act relates to notification of decisions and reasons.

B. Section 54A Determination as amended by Decision IASC/DEC/9715 and change of name for Australia-Asia Airlines Limited

I, LAURENCE JOHN BRERETON, Minister for Transport, acting under section 54A of the *International Air Services Commission Act 1992*, declare:

- (a) that the Act applies (as if immediately after the commencement of that section the Commission had made a determination in the terms of this declaration) to 3.4 co-efficients weekly of pre-existing capacity, being capacity that is:
 - (i) established in accordance with:
 - (A) the entitlements of Australian carriers that operate air services between Australia and Taiwan under bilateral arrangements; and
 - (B) the co-efficients applying on 25 March 1994 under the bilateral arrangements; and
 - (ii) allocated to Qantas Limited ACN 003 613 465 for the period of 5 years starting on 28 November 1994; and
- (b) that paragraph (a) has effect subject to the following conditions:
 - (i) the capacity must be fully used from the start of the period of the allocation;
 - (ii) the capacity may be used only by:
 - (A) Qantas Limited; or
 - (B) another Australian carrier of which Qantas Limited is a wholly owned subsidiary;

except to the extent that the Commission authorises Qantas Limited or that other carrier, in writing, to use the capacity jointly with another carrier or person for the provision of an international air service;
 - (iii) if there is a change in the ownership or control of Qantas Limited or of another Australian carrier of which Qantas Limited is a wholly-owned subsidiary, the change must not result in:
 - (A) substantial ownership or effective control of Qantas Limited, or of that other carrier, being no longer Australian,; or
 - (B) substantial ownership or effective control of Qantas Limited, or of that other carrier, passing to a third Australian carrier or other person who has substantial ownership or effective control of a third Australian carrier.