

COMMONWEALTH OF AUSTRALIA

International Air Services Commission Act 1992

APPLICATION TO PRE-EXISTING CAPACITY BETWEEN AUSTRALIA AND TAIWAN

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 5.5 co-efficients of pre-existing capacity, being capacity:
 - (i) established in accordance with the entitlements of Australian carriers that operate air services between Australia and Taiwan under bilateral arrangements; and
 - (ii) allocated to Australia-Asia Airlines Limited (“Australia-Asia”) for a 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;
 - (ii) the capacity may be used only by Australia-Asia, except to the extent that the Commission allows Australia-Asia, in writing, to use the capacity jointly with another carrier or person for the provision of an international air service;
 - (iii) if the ownership or control of Australia-Asia changes the change must not result in:
 - (A) substantial ownership or effective control of Australia-Asia being no longer Australian; or
 - (B) substantial ownership or effective control of Australia-Asia passing to another Australian carrier or other person who has substantial ownership or effective control of another Australian carrier.

Dated

1994

Minister for Transport

INTERNATIONAL AIR SERVICES COMMISSION ACT 1992

EXPLANATORY STATEMENT

DECLARATION UNDER SECTION 54A

Issued by the Minister for Transport
The Hon Laurie Brereton, MP

The rights of Australian carriers to operate international scheduled air services to other countries are governed by Australia's bilateral arrangements with those countries. The arrangements typically provide for the designation of international carriers and set out a regime under which the capacity and points which may be served by the designated airlines of each country are determined - including by setting limits on the frequency of flights and the number of passenger seats available on each flight.

Until 1 July 1992, Australia's only designated passenger airline, Qantas, was able to utilise all capacity rights available to Australia under these arrangements. In policy changes announced on 26 February 1992, the Government indicated its intention to provide the opportunity for competition among Australian carriers in the operation of scheduled international air services through a scheme of multiple designation.

The *International Air Services Commission Act 1992* (the Act) established the International Air Services Commission (the Commission). The primary function of the Commission is to make determinations allocating available capacity to Australian carriers. Determinations identify which designated airlines are selected to operate particular available capacity and set necessary conditions. Determinations are to be reviewed after a specified period (usually five years). The Commission can also review a determination in the event of a breach of conditions of the determination.

Amendments to the Act which commenced on 28 November 1994 included provisions which brought capacity under the Act where the foreign party to a bilateral arrangement is not recognised by Australia as an independent State, as is the case with Taiwan. Sub-section 54A(2) of the Act confers power on the Minister to declare in writing that the Act applies to specified pre-existing capacity as if, immediately after the commencement of the section, the Commission had made a determination in the terms as set out in the declaration. The term "pre-existing capacity" is defined in sub-section 54A(1). Subsection 54A(5) provides that declarations under sub-section (2) are disallowable instruments.

As at 28 November 1994, bilateral arrangements concluded between the Australian Commerce and Industry Office in Taipei and the Civil Aeronautics Administration in Taipei allowed Australian carriers to operate a total of eight co-efficients of capacity between Australia and Taiwan. The Minister's declaration formalises the allocation of capacity to Australia-Asia Airlines Limited (Australia-Asia), a wholly owned subsidiary of Qantas Airways Limited. It reflects the level of capacity being operated to Taiwan by Australia-Asia as at 28 November 1994 of five B747SP services per week, utilising 5.5 co-efficients of capacity in accordance with the applicable aircraft substitution formula under the bilateral arrangements.

The Commission is able to consider allocating the remaining 2.5 co-efficients of capacity on the route to any Australian carriers on application, there being no restriction on the number of Australian carriers allowed to operate services on the route.

The declaration sets out conditions to apply to the use of the capacity allocated. The conditions reflect subjects on which the Commission must itself impose conditions when making determinations allocating capacity (Section 15 of the Act).