

## **PROPOSED COMMISSION GUIDELINES FOR CONSIDERING APPLICATIONS FROM PROSPECTIVE NEW AIRLINES ON A SUBJECT TO FINANCE BASIS**

The Commission has recently reviewed its procedures for considering applications from prospective new carriers to take account of situations where the applicant seeks an allocation of capacity on a subject-to finance basis. The Commission's current guidelines dealing with new applications include financial viability testing guidelines which do not explicitly envisage consideration of subject to finance type applications.

In the past, the Commission has made some allocations to prospective new applicants on a subject to finance basis. These carriers were unable to commence operations, despite the Commission providing extensions of time in which to do so. Over more recent years, the Commission has not made any further allocations on a subject to finance basis. The Commission has an obligation under the Minister's policy statement to allocate capacity only to carriers which it considers reasonably capable of implementing its proposals.

However, the Commission considers that there would be a limited range of circumstances in which it may be appropriate for it to consider applications on a subject to finance basis, and provided the applicant presents a sound business plan and can demonstrate that it is reasonably capable of receiving the approvals necessary to operate such as designation and licensing as an Australian international airline and obtaining an Air Operator's Certificate from the Civil Aviation Safety Authority.

The sorts of circumstances in which the Commission might countenance subject-to-finance approvals cannot be precisely prescribed, but would most likely involve applications for allocations of capacity:

- on multiple designation routes, so that designation of the carrier, should this occur, would not preclude other carriers being designated to operate on the route;
- where generous amounts of capacity were available for allocation or there were open capacity arrangements under the air services arrangements concerned, so that allocations to the new carrier were unlikely to inhibit the reasonable ambitions of other carriers seeking capacity; and
- the carriage of freight-only was proposed, as this would avoid the possibility of a passenger airline pre-selling tickets to passengers and subsequently proving unable to operate, with attendant concerns about issues such as airfare refunds and consumer complaints.

In making subject-to-finance allocations the Commission would also want to limit the scope for carriers to hold capacity unused for lengthy periods. The Commission would propose to adopt one of two approaches to achieve this objective.

The first method would be to set a relatively imminent start-date for services, say six months from the date of the determination, making it clear that a review process would

be instituted immediately the six months had expired, if the carrier had not started operations. The Commission would also make it clear in the determination that no appeals for extensions would be entertained prior to the expiry of the six months. In the past, some carriers with subject to finance determinations have sought and received extensions of the date by which capacity must be utilised but still proved unable to commence services. The Commission would want to avoid such situations arising in future. If a review was initiated, a carrier would need to make a compelling case for the determination not to be revoked. In addition, the Commission would normally continue its practice of making three-year interim determinations for new carriers, except where air services arrangements have unlimited capacity entitlements. In this latter case, ten year determinations may be made.

A second option that might be applied by the Commission would be to issue a determination for a short period, such as one year. As noted above, the Commission must generally specify a period of three, five or ten years, depending whether capacity and routes are unrestricted. However, where a carrier applies in writing requesting that a determination be for a lesser period, the Commission may specify a lesser period. This would mean that, should the carrier not be operating by the end of the determination period, the Commission would not have to institute a review process and the determination would simply expire. The renewal provisions of the Minister's policy statement (paragraph 8) do not apply, so the Commission does not have to institute a renewal process as it would be required to do for normal duration determinations. This means that the carrier would need to apply afresh for the capacity, as if it were a new application.

As the Commission can only impose a short duration period in response to a request by a carrier, carriers seeking approval on a subject-to-finance basis should specify this in their applications. The Commission may choose to indicate in a determination of this type that successful operation of the capacity in accordance with the conditions of the determination would be regarded favourably by the Commission compared with a situation where the carrier had failed to operate, if the carrier sought a fresh determination for a longer period. However, the provisions of the policy statement would always take precedence over a general assurance of this type, such as in the event of a contested case involving a competing application from another carrier for the same capacity.

Guidelines are no more than a general indication as to what the Commission would be likely to do. They are intended to be flexible and not prescriptive in every situation. The Commission would take account of the circumstances of the case before deciding whether or not to make a subject-to-finance determination. It will therefore reserve the right to make determinations on whatever basis it considers appropriate consistent with the requirements of the *International Air Services Commission Act 1992* and the Minister's policy statement.

Subject to any comments from stakeholders and interested parties, the Commission would propose to adopt these principles with immediate effect. Any comments should be provided to the Commission by 17 June 2005.

**From:** [Milln, Mike \(DTEI\)](#)  
**To:** [McAndrew Roy;](#)  
**CC:**  
**Subject:** RE: IASC: Comments sought on proposed guidelines for considering Subject to Finance applications June 2005  
**Date:** Friday, June 17, 2005 3:58:22 PM  
**Attachments:**

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Dear Roy,

Thank you for the opportunity to comment. The following comments reflect the views of my Department and should not be represented as the SA Government's views:

We support the principal of the Commission making determinations on a subject-to-finance basis. Possession of a determination may be a prerequisite for the applicant to secure its finance, without which the applicant may not be able to satisfy CASA in its assessment of the applicant's financial position under section 28(2) of its Act prior to granting an AOC.

We agree that the primary criteria that the applicant should satisfy are the presentation of a sound business plan and demonstration of the *ability* to secure the necessary operational certification including an airline licence and air operators certificate.

If the applicant satisfies those criteria, and if the prior confirmation of a capacity determination is clearly a necessary part of it securing finance, then we agree that a determination should be made in the circumstances you suggested in the three dot points on page 1 of your proposal.

We also believe that the Commission should have the discretion to make a subject-to-finance determination, when the primary criteria are satisfied, on a single or multiple designation route in circumstances where limited capacity is being contested by other applicants. The subject-to-finance applicant under these circumstances would have to demonstrate that its operation of the capacity would deliver greater public benefits according to the Section 5 criteria of the Minister's Policy Statement than the competing applicants. Under these circumstances we would expect that the determination would be made on a different basis as suggested below.

When holding the capacity open for the subject-to-finance applicant does not preclude the Commission making determinations in favour of other applicants

for new or additional capacity, then we see no reason to be overly prescriptive in setting a start-up date. Certainly, a 6 month requirement seems arbitrary and onerous. The nature and difficulty of securing investment in a start-up airline - even one with demonstrated operational capability - are such that a longer period may be required. Similarly, there seems to be little reason to preclude provision for appeals for extensions to the start-up date provided that the conditional determination is not impacting on the aspirations of other carriers.

Where the capacity is contested or the conditional determination may preclude the Commission making a subsequent determination to another carrier, then we agree with the suggested first method of setting a six month start-up date with no extension normally being allowed during that period without a full review process, and an interim determination of 3 years. However, we believe the Commission should have provision to implement the review during the 6-month period if the applicant presents reasonably compelling evidence in its request that the needed extension is minor.

The second option for issuing determinations suggested in your paper has the merits of transparency and reducing the Commission's transactional costs, but it is not likely to assist an applicant to secure finance. The conditional determination and the start-up provisions need to be a bankable asset and the only circumstances in which we can envisage a subject-to-finance applicant seeking a determination for the lesser period are when that is the only option available to it.

Best regards

Mike Milln

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Principal Adviser - Aviation & Planning Coordination  
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-----Original Message-----

**From:** McAndrew Roy [mailto:Roy.McAndrew@dotars.gov.au]

**Sent:** Wednesday, 8 June 2005 11:39 AM

**To:** IASC; IASC

**Subject:** IASC: Comments sought on proposed guidelines for considering Subject to Finance applications June 2005

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the determination not to be revoked. In addition, the Commission would normally continue its practice of making three-year interim determinations for new carriers, except where air services arrangements have unlimited capacity entitlements. In this latter case, ten year determinations may be made.

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Guidelines are no more than a general indication as to what the Commission would be likely to do. They are intended to be flexible and not prescriptive in every situation. The Commission would take account of the circumstances of the case before deciding whether or not to make a subject-to-finance determination. It will therefore reserve the right to make determinations on whatever basis it considers appropriate consistent with the requirements of the *International Air Services*

*Commission Act 1992* and the Minister's policy statement.

Subject to any comments from stakeholders and interested parties, the Commission would propose to adopt these principles with immediate effect. Any comments should be provided to the Commission by 17 June 2005.

The proposed guidelines are also available from the Commission's internet site under procedures or use the following link <http://www.iasc.gov.au/pubs/subjecttofinance.pdf>

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FAXED  
28-06-05

Mr M Andrews  
↑

28 June 2005

Mr Michael Bird *MB 11/7*  
Executive Director  
International Air Services Commission  
GPO Box 630  
CANBERRA ACT 2601

Dear Mr Bird *Mice*

**Re: Proposed Commission Subject-to-Finance Guidelines**

I refer to the Commission's invitation of 8 June 2005 for comment on the proposed Commission guidelines for considering applications from prospective new airlines on a subject-to-finance basis.

While capacity allocations have not been made on a subject-to-finance basis for some years, we believe that the existence of stricter guidelines on how such applications are to be dealt with in future is useful.

We note the Commission only proposes to make such qualified allocations in limited circumstances, such as where generous or unlimited capacity entitlements are available for allocation and where all-cargo services are proposed.

Qantas assumes that this means where more restrictive capacity entitlements exist under air services arrangements, and/or where a competing application has been made, an airline that is unable to prove its financial standing will always have its application rejected, rather than be awarded a subject-to-finance allocation.



**Qantas Airways Limited** ABN 16 009 661 901  
Qantas Centre 203 Coward Street Mascot NSW 2020 Australia  
Telephone 61 (2) 9691 3636

We broadly support this approach, and believe it important to have the processes occur within a reasonable time span. In 2004, Backpackers Xpress, which ultimately failed to satisfy the Commission of being reasonably capable of implementing its proposal, managed to delay approval of a competing application made by Qantas for several months. We would therefore prefer to see tighter requirements for any start-up application that eliminate drawn out processes under which the prospective operator seeks to prove its organisational, operational and financial bona fides.

While agreeing with the Commission's judgment that consumer issues do not apply to all-cargo services to the same extent as for passenger services, Qantas does not support the proposal to make subject-to-finance allocations for dedicated freighter services on routes where capacity is restricted.

From an airline perspective, such an approach has the potential to frustrate complex commercial planning processes for considerable periods, in markets that are no less competitive than for passenger services. Moreover, delays in approval of applications in contested all-cargo cases, in which an airline is seeking to secure financing, may have the potential to generate even greater opportunity costs in terms of trade foregone than for passenger services.

Qantas supports the Commission's proposed methods of limiting the time in which a subject-to-finance approved carrier would be required to implement its services.

We see no reason why both of the approaches outlined by the Commission could not be used concurrently – that is a requirement to start services within six months and the grant of a short term (one year) determination, unless unlimited capacity provisions exist. However, we find it difficult to envisage that any start-up carrier would voluntarily opt for a one-year determination, even though it might cause the Commission to look more favourably on them in a future application.

We would be pleased to engage in further discussions on the guidelines if the Commission considers this appropriate, and/or our assumptions above are incorrect.

Yours sincerely



**David Hawes**  
**Head of Government and International Relations**



# Australia World Airways

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20 June 2005



Mr Michael Bird *21/6*  
Executive Director  
INTERNATIONAL AIR SERVICES COMMISSION (IASC)  
Canberra ACT (via Fax: 02 6267 1111)

Dear Mr Bird

**Subject: FINANCE & FUNDING**

We refer to your e-mail, dated 8th June 2005, and have pleasure to respond in accordance with the invitation.

AW has read with interest the proposed changes to the Commission's assessment criteria for applicant airlines in relation to finance and funding.

It is pertinent that over the period (1992) since the IASC's inception no major potential new entrant into the scheduled Australian international passenger market has commenced operations to compete with the Qantas as the national flag carrier.

Since Australia World Airways successful application to the Commission, it has been frustrated by the funding requirement of A\$50M as set by the IASC in the conditional Determination.

During this time, we have also witnessed wholesale allocations of valuable Australian bilateral capacity granted to various foreign airlines with little regard to incentive in the local aviation industry nor encouragement from the Government.

AW intends to make a submission to the forthcoming ministerial high powered review of Australia's aviation industry on the above subject. We shall make the point that your Commission has afforded AW at all times a highest possible standard of service and has delivered all performance expectations in accordance with the IASC Act.

Therefore AW welcomes this proposal if it indeed facilitates the entry into the marketplace of new international airlines in competition with the entrenched interests of Qantas.

Please have this letter placed on the 'Public Register'.

Yours sincerely *Simon G. Warrender*

SIMON G. WARRENDER  
Executive Chairman

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