



Australian Government
International Air Services Commission



International Air Services Commission | annual report 2003-2004

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annual report 2003–2004



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Australian Government
International Air Services Commission

The Hon John Anderson MP
Minister for Transport and Regional Services
Parliament House
CANBERRA ACT 2600

Dear Minister

We are pleased to submit the twelfth Annual Report of the International Air Services Commission, for the year ended 30 June 2004.

Our report is submitted to you in accordance with subsection 53(1) of the *International Air Services Commission Act 1992* and is for presentation to each House of the Parliament in accordance with subsection 53(2) of the *International Air Services Commission Act 1992*.

Yours sincerely

Handwritten signature of John Martin in black ink.

John Martin
Chairman

Handwritten signature of Michael Lawriwsky in black ink.

Michael Lawriwsky
Commissioner

13 October 2004

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Part 1 — Review by Chairman

It is a pleasure to provide my first review as Chairman, covering the Commission's activities for 2003–04. The Commission's work was set against the background of rapid changes in the demand for international airline services. A strong recovery in travel levels over the latter part of the year contrasted sharply with the earlier depressed conditions associated with international terrorist threats and conflict and the SARS virus. Turbulent demand patterns make life difficult for airlines. There are great adjustment strains on airlines as they juggle critical issues such as fleet management, staffing levels, pricing and so on.

It was not surprising therefore that the Commission itself faced a challenging year, but an encouraging one, as activity picked up with the recovering industry. The Commission handled applications from several prospective new Australian carriers and facilitated the expansion of services by established airlines. Not surprisingly, the Commission's workload rose, and it issued about 60% more determinations and decisions than in the previous year (47 compared with 29). This was a level similar to activity rates of more 'normal' years.

The allocation of capacity to new airlines was a feature of the Commission's work. In July, Virgin Blue Airlines was allocated capacity on routes to New Zealand, Fiji and Vanuatu. In December, Virgin Blue also obtained rights to fly on the New Caledonia route. Virgin Blue launched its international arm as Pacific Blue, with flights between Christchurch and Brisbane.

Two other passenger operators were successful in obtaining capacity allocations from the Commission. Norfolk Jet, which flies between Norfolk Island and the Australian mainland, received capacity for services between Norfolk Island and New Zealand. Airnorth, an established

domestic operator based in northern Australia with some international charter experience, was allocated capacity for passenger services between Darwin and Kupang in Indonesia.

There was activity from new carriers in the freight market also. HeavyLift Cargo Airlines received allocations of capacity on several south-west Pacific routes and started freight services to the Solomon Islands. The airline is expected to commence services to other points during 2004. Pacific Air Express was allocated capacity on the Papua New Guinea route for freight services, but had not commenced services as at 30 June 2004.

Applications were also received from a prospective passenger operator, Backpackers Xpress. Backpackers Xpress planned to operate services between Melbourne and the United Kingdom and Germany via Thailand and India. It applied for capacity on all of these routes. The Backpackers Xpress application for capacity on the India route was unsuccessful. The Commission found that Backpackers Xpress was not reasonably capable of implementing its proposed services at that time. The capacity in question was allocated instead to Qantas, which also sought to operate on the India route. The Backpackers Xpress applications for capacity on the other routes remained under consideration at year's end, pending the receipt of additional information from the airline. These cases illustrated the desirability of additional capacity entitlements being negotiated under the UK and India air services arrangements, to facilitate the ambitions of Australian carriers.

Qantas obtained expanded opportunities on a range of routes, particularly within Asia. There were several highlights. As noted above, Qantas was allocated capacity on the India route, allowing it to start three services per week

between Sydney and Mumbai from September 2004. An expansion of flights to five per week is scheduled for April 2005.

Qantas was also granted unlimited passenger capacity on the Singapore route, following changes to the air services arrangements between Australia and Singapore. Another major outcome was the granting to Qantas of capacity to operate a twice weekly B747 cargo service to the United States via Singapore and China. This followed a break-through agreement between Australian and Chinese aviation authorities allowing Australian carriers to operate in the large and growing China — United States market.

Amendments to the *International Air Services Commission Act 1992* (the Act) and associated regulations came into effect during the year. The changes increased the focus of the Act on the benefits to be gained from fostering competition in international air services. They also provided for the Commission to delegate in certain circumstances its powers and functions to an officer of the Department of Transport and Regional Services (DOTARS). The Government's intention in providing the delegation power was to streamline decision making. The Commission moved quickly to give effect to the new arrangements and the Delegate (the Commission's Executive Director) made his first determinations on behalf of the Commission in early 2004. A protocol was developed to provide a clear basis for deciding whether an application will be dealt with by the Commissioners or the Delegate.

The Minister also issued to the Commission a new policy statement, mainly to take account of the changes to the Act and the new regulations. The changes are discussed in the body of this report. The policy statement is reproduced at *Appendix 6*.

In March 2004, the Commissioners met with the Minister for Transport and Regional Services. The meeting provided an opportunity to discuss industry developments and to brief the Minister on the Commission's work and significant issues of interest arising over the previous 12 months or so.

The outlook for international aviation in the coming year continues to be uncertain, despite the strong recovery throughout most of this year. Sharp increases in the world price of oil in mid-2004 added significantly to the cost base of airlines. If this situation continues, it could act to suppress demand for air travel if air fares rise in response to the fuel price increases. On the other hand, a sound world economy suggests that there is likely to be healthy demand for air travel in the year ahead. Whatever the events of the next year, the Commission will continue to be responsive to the needs of its stakeholders and changing industry circumstances.

In concluding, I thank my fellow Commissioners, Dr Michael Lawriwsky and Mr Stephen Lonergan for their welcome on my assuming the role of Chairman and for their expert advice. I also thank the members of the Secretariat for their professional advice and practical assistance to the Commission throughout the year.

John Martin
Chairman

Part 2 — Commission overview

Role and functions of the Commission

The Commission is an independent statutory authority. Its role is to allocate capacity to Australian international airlines from entitlements available under air services arrangements between Australia and other countries.

The Commission was established under the *International Air Services Commission Act 1992* (the Act). The object of the Act is to enhance the welfare of Australians by promoting economic efficiency through competition in the provision of international air services, resulting in:

- increased responsiveness by airlines to the needs of consumers, including an increased range of choices and benefits
- growth in Australian tourism and trade
- the maintenance of Australian carriers capable of competing effectively with airlines of foreign countries.

The functions of the Commission are to:

- make determinations allocating capacity and to renew those determinations
- conduct reviews of determinations
- provide advice to the Minister about any matter referred to the Commission by the Minister concerning international air operations.

Determinations are usually granted for a period of five years, but may be for 10 years if

unlimited capacity is available under the relevant air services arrangements, or for three years in certain circumstances. Carriers will normally seek to renew determinations and the Commission is required to start reviews of these determinations at least one year before they expire. In most circumstances there is a rebuttable presumption in favour of the incumbent carrier.

Carriers sometimes seek to amend their determinations, or conditions attaching to them, for various reasons. Where the Commission agrees to such amendments (following a review), it issues decisions to vary determinations accordingly. The Commission may itself initiate a review of a determination if it considers that a carrier is, or may become, in breach of a condition of a determination.

The Act provides that Australian carriers generally cannot use allocated capacity to conduct joint services with another carrier (such as to code share) without the Commission's approval. This is because there is sometimes potential for joint services arrangements to have anti-competitive impacts. In some situations though, Commission approval for joint service arrangements is not required. Examples include code sharing between domestic and international carriers, or where bilateral arrangements allow carriers to code share without it being considered an exercise of capacity which is subject to allocation by the Commission.

The Minister's policy statement directs the Commission about the manner in which it is to perform its functions under the Act. The policy statement sets out criteria to be applied by the Commission in assessing the benefit to the public in relation to allocations of capacity to Australian carriers in a range of circumstances. The policy statement is a disallowable instrument under section 11 of the Act. It is reproduced at *Appendix 6*.

The Commission has published procedures it follows in making determinations. A summary of these procedures is set out at *Appendix 5*. The procedures are intended to ensure that applicants and other stakeholders have a clear guide to the Act and policy statement, understand the Commission's decision making processes, and are aware of their rights and obligations.

Executive profile

The Commission comprises a part-time Chairman and two part-time Commissioners.



Dr Michael Lawriwsky, Commissioner; Mr John Martin, Chairman and Mr Stephen Lonergan, Commissioner

Mr John Martin

Mr John Martin, Chairman (formally appointed in November 2003 for a three year term ending in November 2006). Mr Martin is a Commissioner with the Australian Competition and Consumer Commission (ACCC) where he has responsibility for matters relating to small business and has been Chairman of the ACCC Transport Committee and Chairman of the Energy Committee. Mr Martin was Executive Director of the Australian Chamber of Commerce and Industry from 1989 until his appointment to the ACCC in June 1999. Previously Mr Martin had policy management roles in the Commonwealth Treasury and Industry Department and was for several years a regional industrial consultant with the United Nations based in South East Asia.

Dr Michael Lawriwsky

Dr Michael Lawriwsky, Commissioner (originally appointed for a three year period which ended in December 2000 and reappointed in December 2003 for an additional three year term ending December 2006). He is a Senior Associate of the Allen Consulting Group. Formerly he was a Director-Corporate Finance, at ANZ Investment Bank, and prior to that a Professor of Commerce at La Trobe University, where he is currently an Adjunct Professor in the School of Business.

Mr Stephen Lonergan

Mr Stephen Lonergan, Commissioner (originally appointed for a three year term ending July 2001 and reappointed for a further three year term ending on 31 July 2004). He is a corporate lawyer based in Sydney. Mr Lonergan has post graduate qualifications in aviation law, has worked with the International Air Transport Association and has particular experience in the airline industry/product distribution system.

Commissioners' attendance at meetings in 2003–04

COMMISSIONER	NUMBER OF MEETINGS	NUMBER OF MEETINGS ATTENDED
Mr Martin	9*	9
Dr Lawriwsky	15	15
Mr Lonergan	15	15

* number of meetings subsequent to Mr Martin's appointment in November 2003

The Commission's stakeholders

There are many parties with a stake in what the Commission does. The Commission places great importance on maintaining effective relationships with these stakeholders and takes account of their views and/or interests in its decision making processes as appropriate. These stakeholders include:

- the travelling public
- existing and prospective Australian international airlines
- the tourism and freight industries, including Australian exporters
- the wider aviation industry, including airport owners, providers of services to airlines, and employee associations
- aviation industry investors, analysts and journalists
- the Minister for Transport and Regional Services
- Australian and State Government departments and agencies.

The Secretariat

The Commission is supported by a Secretariat staffed by officers of DOTARS. The Secretariat is headed by an Executive Director, supported by a Senior Adviser and an Office Manager. The staff provides advice and assistance to the Commissioners on all matters concerning the operations of the Commission.

The role of DOTARS

DOTARS plays a role that is complementary to the Commission's responsibilities. DOTARS negotiates with foreign governments, on behalf of the Australian Government, the amount of capacity available to Australia's carriers on international routes. Details about the capacity

available for allocation by the Commission on each route are recorded in a Register of Available Capacity maintained by DOTARS. The register is updated to reflect changes in capacity entitlements agreed in air services negotiations, determinations allocating capacity made by the Commission and unused capacity handed back to the Commission by airlines.

The Commission and DOTARS liaise on matters such as whether carriers are likely to be reasonably capable of obtaining the approvals necessary to operate on a route and of implementing their applications. This is a particularly important process in relation to potential new carriers.



Those pictured from left to right are: Michael Bird, Executive Director; Michael Lawriwsky, Commissioner; Roy McAndrew, Senior Adviser; John Martin, Chairman; Carolyn Sweeney, Office Manager and Stephen Lonergan, Commissioner



Photo provided by
Qantas Airways Ltd

Part 3 — Report on performance

Overview of Commission performance

The Commission's performance in carrying out its primary function — to make and review determinations — can be judged against three broad criteria. These are whether the Commission has:

- effectively served the object of the Act (to enhance the welfare of Australians)
- operated in a way which has served the interests of its stakeholders
- made efficient use of the Government resources available to it.

The Commission considers that it has performed satisfactorily against these criteria, based on an assessment against performance targets. A discussion of the results of the assessment follows.

Results against performance targets

Effectively serving the objectives of the Act

The Commission considers that its most critical performance benchmark is to serve the object of the Act by making determinations and decisions consistent with the requirements of the Act and Minister's policy statement (which sets out how the Commission is to perform its functions).

In the Commission's view, all determinations and decisions were made in accordance with these requirements. In two cases, the Commission sought legal advice to clarify certain aspects of the legislation, before finalising its consideration. In one complex case, involving competing applications for capacity, the Commission issued a draft determination. A draft determination provides an opportunity for affected parties to comment on the Commission's consideration and

conclusions, before the Commission moves to a final determination. No determinations or decisions were challenged formally by affected parties via administrative appeal channels. Nor were there any informal complaints about the Commission's determinations or decisions or associated processes.

During the year there were changes to the Act and a new policy statement was issued by the Minister. The Commission responded promptly to these changes, and related new regulations governing the delegation of Commission powers and the circumstances in which those powers may be exercised by the Delegate. A protocol between the Commissioners and the Delegate (the Commission's Executive Director) was signed to ensure that there is a clear basis for deciding which cases will be dealt with by the Commission and which by the Delegate. A flow diagram was produced to provide an easy-to-follow representation of the steps followed by the Commission in making decisions under the revised regulatory structure. The protocol and flow diagram have worked effectively, although they have been in operation for a short period. They will be kept under review and improvements made if further experience suggests this is desirable. The flow diagram was circulated to stakeholders as part of the process of informing them about the operation of the changed regulatory arrangements.

Serving stakeholders — performance against service charter

The Commission implemented a revised service charter last year, with clearer measures of performance that are quantifiable where feasible. The Commission worked hard at providing a high quality service to its many stakeholders and

feedback from clients suggests that the Commission continues to deliver services in a satisfactory manner.

The Commission's service commitments are in two areas — dealings with stakeholders and decision making processes. The following table

details the specific commitments made under these headings and the Commission's performance against them. A survey of stakeholders conducted at the end of the financial year provided responses from which the information relating to a number of commitments was derived.

Dealings with stakeholders — commitments	Rating*
Fair, courteous and professional	100%
Clear, accurate advice and answer questions promptly	94%
Respond constructively to feedback	93%
Include contact names and phone numbers in correspondence	100%
Answer phone calls by name and return missed calls within 24 hours	100%
Decision making process — commitments	Rating*
Inform within five working days of receipt of applications	98%
Follow published procedures for handling cases	100%
Seek only reasonably necessary information	96%
Explain reasons for any additional information sought	89%
Be transparent and fair	92%
Make decisions about uncontested applications within four weeks and contested applications within 12 weeks, or inform if issues arise to extend the decision time	84% and see discussion
Finalise renewal of existing determinations as quickly as possible	Yes
Notify applicants within 24 hours of a decision being made and other interested parties within three working days	94%

* The percentages are calculated using a weighted average of responses on a six point scale used in the survey. A rating of 'always' is rated as 100%, 'mostly' as 75%, 'usually' as 50% and so on.

Detailed information about the Commission's timeliness standards is as follows.

The Commission has two benchmarks for on-time performance, which relate to the two broad types of cases it considers. Uncontested and unopposed applications involve only a single applicant with no submissions opposing the granting of the application. Contested and/or opposed applications involve two or more applicants competing for the same limited capacity, and/or submissions which oppose a proposal. Clearly, the second category of cases tends to be more complex than the first category. The more complex cases usually involve the application by the Commission of additional public benefit criteria in order to determine an outcome.

The Commission has a benchmark of four weeks for uncontested and unopposed applications from the date of receipt of applications to the date of publication of determinations or decisions. For contested or opposed applications, the Commission aims to publish determinations or decisions within 12 weeks of receipt of applications.

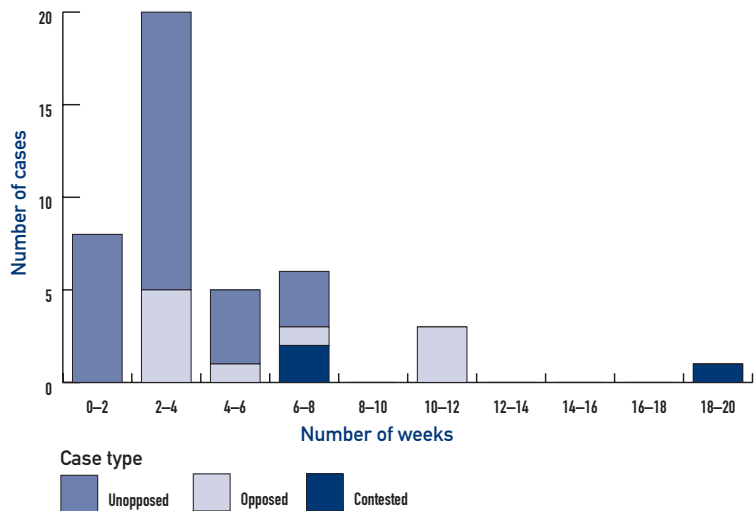
The Commission appreciates that quick decision making is valued by applicants and drawn out processes can represent an unnecessary cost of doing business. However, it is important for the Commission to record that it does not regard rapid decision making as an end in itself. The Commission considers effective and proper decision making to be its over-riding priority and a balance needs to be struck between this primary concern and the speed of making decisions. Occasionally issues arise which require

longer deliberation by the Commission, or where the Commission agrees to give applicants additional time to provide relevant information. In such cases, decisions may take longer than benchmark times. However, for very straightforward applications, the decision times may be considerably shorter than the benchmarks.

Broadly speaking, the timeliness benchmarks can be met only with effective Commission processes and active management of cases. Bettering the benchmarks is genuinely challenging for the Commission as the steps involved in properly processing and deciding upon applications necessarily take time. The Commission's internal processes are streamlined and make maximum use of electronic processing and communication. The Commission has identified no superfluous processes which can be eliminated to speed up decision making further.

The Commission expects that applicants will allow sufficient time in advance of their applications for the Commission to properly consider their proposals as the Act and Minister's policy statement require. However, when an airline indicates that it requires rapid approval from the Commission because delay would cause difficulty for the airline in implementing its plans, the Commission endeavours to decide such cases particularly expeditiously. The Commission meets on a frequency which balances the need for timely decision making against the costs of meeting more often. Where straightforward matters are involved, the Commission occasionally conducts meetings through electronic means, either by teleconference or email.

Distribution of decision times by type of case



Note: The chart does not include renewal determinations.

This year, the average time taken to conclude consideration of uncontested and unopposed applications was 3.2 weeks, considerably better than the four weeks benchmark. The average time taken to deal with contested or opposed cases was 7.4 weeks, well within the 12 weeks benchmark standard. The Commission averaged 4.4 weeks for all determinations and decisions (leaving aside renewal determinations, which are generally initiated by the Commission on a time frame that suits the airlines’ requirements). The above chart illustrates the Commission’s timeliness performance in detail.

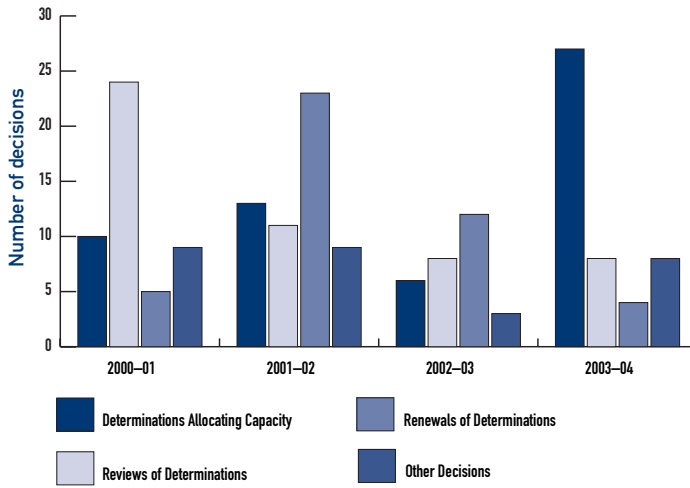
The Commission does not have a quantity performance target. This is because the level of activity varies from year to year and is unrelated to the Commission’s performance. Rather, the number of determinations and decisions is primarily related to the number of applications received from airlines. This in turn is dependant on several factors, principally the state of the world aviation environment, which has experienced great turbulence over the past few years. The charts that conclude this section demonstrate the residual impact of SARS and the Iraq war in the early part of the year, but also

the subsequent spectacular recovery in demand. Such volatility placed great pressure on airlines in managing their fleets practically and financially to meet these rapidly changing circumstances. The Commission, in turn, endeavoured to play its part by dealing efficiently with the resulting increased volume of business coming before it.

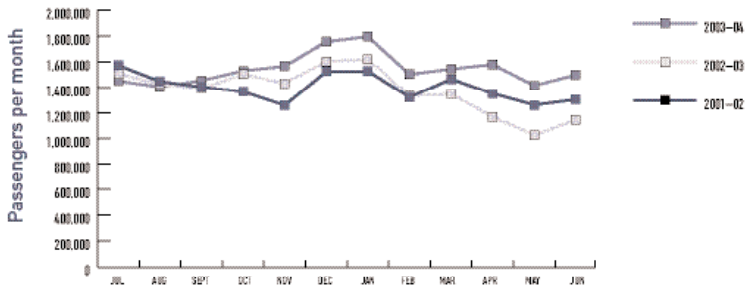
The cycle of renewal of determinations also affects the number of determinations, with more renewals being made in some years than others. However, the Commission sees value in keeping track of the number of determinations and decisions produced each year. The figures provide a useful indicator of the level of output relative to Government resources allocated to the Commission, as well as being of general historical interest.

The following graph illustrates the level of activity in the year, compared with the preceding three years. As is evidenced by the graph, the Commission produced about 60% more determinations and decisions this year than in 2002–03. This was achieved with a similar level of staffing and financial resources to last year (see below for further detail).

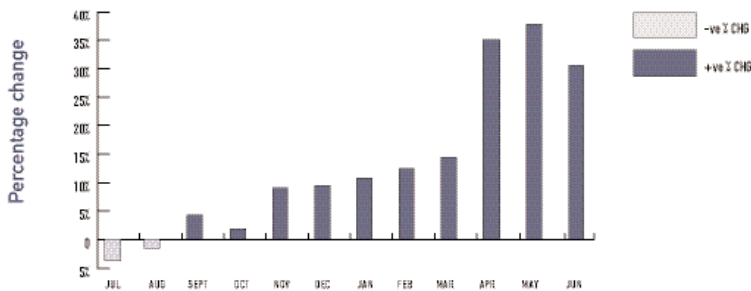
Historical analysis of determinations and decisions



Traffic to and from Australia by month for 2001-02 to 2003-04



Percentage change in traffic to and from Australia, 2003-04 vs 2002-03



Efficient use of available Government resources

DOTARS underwent a major reorganisation just prior to the beginning of the financial year. As a result, the Commission's funding was provided from the budget allocation to the new Policy and Research Group within DOTARS, but under a different funding model from that used in previous years.

The Commission accepted a proposal from DOTARS for an arrangement whereby an allocation was made to the Commission for its core administrative requirements. This amount, \$90,000, included provision for advertising of determinations, production of the Commission's annual report, Commissioners' fees and travel expenses, and legal advice services.

Under the new arrangements, the Policy and Research Group directly funded Secretariat staff salaries, under a pooled salary model adopted by that group for the management of its financial resources. The Commission was supported by a Secretariat the equivalent of 2.8 staffing years, up from 2.3 in the previous year, representing an increase of 20% in staffing resources. The Policy and Research Group also took on responsibility for funding certain 'pool' items including staff development, personnel support services, consumables, and postage and subscriptions, which previously fell within the Commission's budget.

As in previous years, certain corporate overheads and property operating expenditure were paid for by DOTARS and are not within the Commission's area of financial responsibility. The Commission continues to be co-located with the Department but maintains its autonomy.

Despite tight cost control, the Commission's expenditure was \$17,000 more than budgeted, totalling \$107,000. The additional expenditure resulted directly from significantly higher than expected activity. The greater than anticipated number of airline applications for the year led to increased advertising costs and more Commission meetings with their attendant expenses. The Commission was able to make some advertising cost savings through adopting shorter-form newspaper advertisements.

The Commission considers that it has made very efficient use of resources, despite slightly exceeding its budget allocation and having 20% extra staffing resources available to it this year. As noted above, the Commission produced about 60% more determinations and decisions this year than last, a large increase in workload. A number of these cases were complex, requiring considerable investment of resources by the Commission and Secretariat. Overall, the Commission is satisfied that it continues to operate with what it considers to be the minimum sustainable resource level consistent with delivery of high standard outcomes. As can be observed from previous annual reports, the Commission has achieved major efficiency gains over the past several years.

For the 2004–05 year, DOTARS has agreed with a Commission proposal for the Commission to be funded on the same basis as earlier years. In this way, the Commission has autonomy over all elements of its expenditure (other than attributed costs such as property operating expenditure) and the full cost of its operations can be clearly identified through its annual report.

Part 5 of the annual report summarises the Commission's financial performance.

Case study — Backpackers Xpress

Introduction

Each year the Commission includes in its annual report a detailed case study of an issue or case of particular interest. In last year's report, the Commission focussed on the emergence of prospective new Australian international airlines. The work commenced in 2002–03 in dealing with several new airline applications came to fruition in early 2003–04 with allocations of capacity being made to Virgin Blue, HeavyLift Cargo Airlines and Pacific Air Express. Later in the year, allocations were made to two other new applicant airlines, Norfolk Jet and Airnorth. Details of the allocations are contained in *Appendices 1 and 2*.

This year, the Commission maintains its focus on the continuing interest of prospective new carriers in starting international air services. The case study examines proposals by Backpackers Xpress to operate services between Australia and the UK and Germany via Thailand and India, applications which came in response to applications for capacity on two of these routes from Qantas.

The applications

The case study starts with reference to applications from Qantas in February 2004 for allocations of capacity on the UK and India routes. In both cases, Qantas sought all of the capacity remaining for allocation — seven services per week on the UK route and 2,100 seats per week on the India route.

Shortly thereafter, in March 2004, Backpackers Xpress applied to the Commission for allocations

of capacity on the UK and India routes, as well as the Germany and Thailand routes. Backpackers Xpress sought three services per week on the UK route and the same 2,100 seats per week sought by Qantas on the India route. Backpackers Xpress planned to operate five B747 passenger services per week between Australia and the UK/Europe. Three services per week were proposed for operation on a routing of Melbourne — Bangkok — Delhi — Manchester. A further two services per week were planned to be flown on a Melbourne — Bangkok — Delhi — Munich route.

In the case of the UK route, because Qantas had sought seven services per week on the UK route and Backpackers Xpress had applied for only three of these seven, Qantas was left as the sole applicant for the other four weekly services. The Commission therefore proceeded to allocate these four services per week to Qantas.

Remaining before the Commission were competing applications for all of the available capacity on both the India route (2,100 seats per week), and on the UK route (three services per week). In determining such cases, the Commission applies additional public benefit criteria contained within paragraph 5 of the Minister's policy statement. Both carriers provided detailed submissions addressing these criteria.

A threshold requirement for allocation of capacity is that a carrier is able to demonstrate to the Commission that it is reasonably capable of obtaining the approvals necessary to operate, and of implementing its application. This requirement is set out in paragraph 4 the Minister's policy statement.

Established airlines, such as Qantas, are generally not required to provide detailed information to demonstrate that they meet the paragraph 4 test. They have already evidenced their ability to do so through operations on other routes.

The situation is different for prospective new entrant airlines which may not have operated international aviation services. Accordingly, Backpackers Xpress was asked by the Commission to provide detailed information in support of its proposals. The purpose in seeking the information was to provide a sound basis upon which the Commission could make a proper assessment of the company's ability to meet the requirements.

The Commission understood from informal advice from Backpackers Xpress that it had been prompted by the Qantas applications to apply for capacity sooner than it would have preferred. The airline's plans and preparations were not as fully developed as it would have wished at the time of making its initial application. However, Backpackers Xpress considered that if it did not compete with Qantas for the UK and India capacity, all of the available capacity would be allocated to Qantas and there may be none available for Backpackers Xpress to apply for at a later date.

The Commission decided that it needed to finalise its consideration of the India case more quickly than it did in relation to the UK route applications. This was because Qantas proposed to start services to India in September 2004, whereas neither Qantas nor Backpackers Xpress intended commencing services on the UK route until November 2004. The Commission was conscious of the need to allow Qantas, should it be the

successful applicant for capacity on the India route, sufficient lead time to prepare for operations and to market and sell seats on its services. The Commission therefore considered the applications for capacity on the India route ahead of consideration of the UK case.

The India case

The application from Backpackers Xpress attracted considerable public and media interest. A number of submissions were received supporting the Backpackers Xpress application for capacity on the India route.

The Commission's approach to the assessment of the competing claims of Qantas and Backpackers Xpress was to consider first whether the applicants met the paragraph 4 requirements of the Minister's policy statement. As an established applicant, Qantas was found to satisfy the requirements. However, after detailed consideration of the material and information provided by Backpackers Xpress, the Commission concluded that Backpackers Xpress was not reasonably capable of implementing its application at the time of assessment. It therefore did not meet the paragraph 4 requirements. However, the Commission considered that Backpackers Xpress may have been able to meet the paragraph 4 standards given additional time, but decided it could delay a decision no longer because of the imminence of the proposed September start date for Qantas' services to India.

Before finalising its position, the Commission wanted to satisfy itself as to whether the public benefits of the Qantas proposal would outweigh those of Backpackers Xpress against the wider paragraph 5 criteria in the Minister's policy

statement. If they did, then there could be no justification for delaying further a decision to allow Backpackers Xpress more time to meet the paragraph 4 criteria.

The paragraph 5 assessment did in fact allow the Commission to reach a firm conclusion that the Backpackers Xpress proposal offered fewer public benefits than the Qantas proposal. The key determinant of this conclusion was that Qantas planned to operate direct terminating services to India. This meant that Qantas was able to offer the full aircraft for sale to travellers on the India route. By contrast, Backpackers Xpress was proposing a through-service, which involved a stopover at Bangkok enroute to India, with flights continuing on to the UK and Europe. Much of the Backpackers Xpress aircraft would be occupied by passengers travelling between Australia and UK/Europe, leaving limited space for Australia – India traffic. In addition, again because Qantas would operate directly between Australia and India, compared with the indirect routing offered by Backpackers Xpress, major savings in travel time would be generated for consumers on Qantas services, particularly for the time sensitive business market.

The Commission found that against most criteria — competition, tourism and consumer benefits — the Qantas proposal offered greater public benefits than did that of Backpackers Xpress. Accordingly, the Commission concluded that public benefit on the India route was likely to be maximised by the allocation of all of the available capacity to Qantas. The Commission issued a draft determination to this effect. No submissions were received, except from Qantas which supported the draft findings but sought

some changes to the proposed conditions of the determination. The Commission issued its final determination — [2004] IASC 104 on 29 June 2004, making the allocation to Qantas on the terms sought by the airline. Qantas was required to operate 1,350 seats (three services) per week by 30 September 2004 and to fully utilise the capacity by 1 November 2005 (five services per week).

The UK case

The Commission deferred consideration of the UK applications from the two carriers because of its finding that Backpackers Xpress may have been able to meet the paragraph 4 requirements of the Minister's policy statement, given some additional time. The Commission was conscious of the emphasis the Act and policy statement give to fostering competition, and considered that Backpackers Xpress had the potential to inject important competition onto routes such as the UK route. The Backpackers Xpress product potentially offered important new choice to consumers.

Significant developments post 30 June 2004

In late July 2004, the Commission finalised its consideration of the competing applications from Backpackers Xpress and Qantas for capacity on the United Kingdom route. The Commission was unable to conclude that Backpackers Xpress was reasonably capable of obtaining the approvals necessary to operate and of implementing its application at that time. The Commission therefore allocated the three services per week in question to Qantas. Backpackers Xpress withdrew its applications for capacity on the Germany and Thailand routes.

Outlook

The capacity entitlements made available to new and established Australian airlines over the past year are likely to deliver an increasing level of benefits for the travelling public and exporters in 2004–05. During the past year, three new Australian airlines have commenced operations and a further two are expected to take up rights early in the new financial year. By the time all of these airlines are flying, Australia will have a total of eight international airlines.

The volume of work undertaken by the Commission is historically closely correlated with the health of the international aviation industry. Naturally, airlines seek to expand their operations in times of growing demand, and this means more work for the Commission as carriers seek additional capacity allocations. If demand is depressed as a result of a continuation of the increase in the world oil price over recent months, or for unforeseen reasons, then there may be reduced activity for the Commission. However, the proliferation of new Australian carriers over the past 12 months is likely to mean that the Commission will continue to have complex public benefit assessments to make, particularly on routes where available capacity is relatively limited.



Photo provided by
Virgin Blue Airways Pty Ltd



Photo provided by
Norfolk Jet Express Pty Ltd

Part 4 — Management and accountability

Corporate governance practices

The Commission is a very small organisation and does not require the complex corporate governance arrangements associated with larger organisations. However, the Commission has a rigorous approach to corporate governance which is made up of two strands.

The first of these strands involves corporate governance arrangements flowing from the requirements and responsibilities placed upon the Commissioners by the Act. Part 4 of the Act sets out procedures the Commission is required to follow. Central amongst the requirements are those relating to the holding of meetings, including the keeping of minutes. The Commission adheres strictly to these procedures. This year, the Commission met, on average, once every three and a half weeks, compared with six weekly last year. Most meetings are held in Canberra at the Commission's offices. Sometimes meetings are conducted by teleconference or email, when straightforward matters are involved. This form of meeting reduces costs, as some Commissioners need to travel from interstate for face to face meetings. In all cases, Commission determinations and decisions are released to stakeholders only after they are fully agreed between all Commissioners.

During their meetings, Commissioners review management, staffing, financial and risk management issues regularly with the Secretariat. The Commission and the Secretariat also communicate regularly by email and telephone about matters requiring the attention of the Commission in periods between meetings.

Part 5 of the Act relates to membership of the Commission. Commissioners are appointed after approval by Cabinet following consideration of recommendations by the Minister.

Commissioners are appointed formally by the Governor-General for a period not exceeding five years. The Government's practice has been to appoint Commissioners for periods of three years and this is the case for the present Commissioners. The Remuneration Tribunal determines Commissioners' remuneration pursuant to the *Remuneration Tribunal Act 1973*. Section 47 of Part 5 of the Act requires Commissioners to disclose any interest that could conflict with the performance of his or her functions in relation to proceedings conducted by the Commission. Commissioners are fully aware of this obligation. No conflict of interest issues arose during the year.

Part 6, section 53, of the Act requires the Commission to prepare and give to the Minister a report of its operations during the financial year. The Commissioners review drafts of the annual report during its preparation and the final report is signed off by the Chairman and delivered to the Minister in accordance with the statutory requirements. The Commissioners also meet annually with the Minister to discuss issues of significance and to receive feedback from the Minister about the Commission's performance.

The second element of the Commission's corporate governance arrangements arise from the Commission's links with DOTARS. Secretariat staff members are officers of DOTARS and accordingly are subject to the responsibilities and obligations applicable to all DOTARS officers. The Secretariat, headed by an Executive Director,

supports the Commission in its work. The Executive Director is responsible for the day to day management and running of the Secretariat and its resources, in accordance with planning process, systems and accountability mechanisms put in place under DOTARS' own corporate governance arrangements. This ensures that there are appropriate controls and safeguards over matters such as expenditure of Commission funds.

Secretariat staff members are expected to adhere to the Australian Public Service Values and Code of Conduct and in particular to:

- be results oriented
- be accountable and responsive
- ensure that decision making processes are transparent, fair and timely and without unnecessary administrative burden
- be responsive to stakeholders
- adopt effective risk management strategies.

All of these expectations are consistent with the commitments made by the Commission to its stakeholders and set out in its service charter.

External scrutiny

There was no formal external scrutiny of the Commission during the year. No determinations or decisions made by the Commission were the subject of judicial or administrative review.

Management of human resources

The average staffing level for the year was about 2.8 full-time equivalent people, compared with 2.3 in 2002–03. Given the increase in the number of Commission cases compared with the previous year, the small increase in staffing resources was valuable in managing the increased workload. The staffing level remained fairly stable throughout the year. Staff members

are experienced officers with a range of skills and abilities between them, providing the capabilities necessary to support effectively the work of the Commission.

DOTARS has undertaken to make additional staffing resources available to the Commission if required from time to time. This offer was taken up during the year to cover absences of Secretariat staff on leave. This co-operative approach taken by DOTARS has been important to the Commission in ensuring that it has adequate support. It also forms part of a strategy to manage the risk associated with dependency on key individuals within the Secretariat.

As DOTARS employees, Secretariat officers are subject to the department's human resource management policies and practices, including its training and development strategies. Accordingly, Secretariat staff members participate in six monthly discussions about their performance against work objectives and personal development activities undertaken and planned for the future. The Commissioners facilitate the professional development of Secretariat members in a number of ways. Participation in development activities such as training courses and conferences is encouraged. Staff members are involved in Commission meetings through the preparation of agenda papers, participation in discussion, and drafting of determinations and decisions for consideration by Commissioners. As work demands of the Commission allow, Secretariat staff are involved from time to time in projects or tasks within DOTARS, as part of the flexible staffing arrangements between it and the Commission. Secretariat staff members are subject to DOTARS' Certified Agreement. The Executive Director has an Australian Workplace Agreement.

Further information about management of human resources is contained in DOTARS' annual report.

Purchasing

The Commission made no significant purchases during the year.

Assets management

Asset management is not a significant aspect of the business of the Commission. Valuable assets such as information technology and office equipment are provided by and managed by DOTARS.

Consultants and competitive tendering and contracting

The Commission did not engage any consultancy services or let contracts during the year.



Photo provided by
Pacific Air Express Pty Ltd



Photo provided by
Qantas Airways Ltd

Part 5 — Financial statements

Financial report as at 30 June 2004

	(1) 2003–04 BUDGET S'000	(2) 2003–04 ACTUAL S'000	(3) VARIATION (COLUMN 2-1)	(4) 2004–05 BUDGET S'000
Salaries	N/A	273	N/A	281
Administrative expenses	90	107	17	116
TOTAL	N/A	380	N/A	397
Staff years	2.8	2.8		2.8

Explanatory notes

The Commission's financial statements have been prepared on an accrual budgeting basis.

As in previous years, the Commission's funding was provided from the budget allocation to DOTARS. However, for 2003–04, the only direct allocation of funds to the Commission was for certain administrative expenses, mostly of a statutory nature. These included Commissioners' fees and travel, advertising of applications for allocations of capacity, production of the annual report, meeting expenses, and legal advisory services.

DOTARS, through its Policy and Research Group, took over responsibility for the salary expenses of Secretariat staff, as well as some administrative costs not specific to the Commission's staff such as staff development, personnel support services, consumables, and communications and subscription expenses.

As in past years, property operating expenses and some other corporate overheads incurred by the Commission were budgeted and paid for by DOTARS. Property operating expenses include the lease rental paid, repair and maintenance, electrical and cleaning services.

For 2004–5, the Commission will resume responsibility for items funded directly by DOTARS in 2003–04. The budget allocation for 2004–05 reflects the additional costs associated with these extra items.

Part 6 — Other information

Occupational health and safety

Secretariat staff members are employees of DOTARS and are subject to the same occupational health and safety arrangements as other departmental officers. The DOTARS' annual report contains details of those arrangements.

Freedom of information

The *Freedom of Information Act 1982* (the FOI Act) requires Australian Government agencies to publish a statement setting out their role, structure, functions, documents available for public inspection and access to such documents. Section 8 of the FOI Act requires each agency to publish detailed information on the way it is organised, its powers, decisions made and arrangements for public involvement in the work of the agency. The information contained in this report meets this requirement. Refer to *Appendix 4* for further details.

No Freedom of Information requests were received this financial year.

Advertising and market research

For newspaper advertising of applications for capacity made by Australian carriers, the Commission paid \$16,092 to HMA Blaze. The Commission is required by the Act to advertise applications received.

Discretionary grants

The Commission makes no grants.

Commonwealth disability strategy

The Commission has not developed its own disability strategy, as the approach adopted by DOTARS is applicable to the Commission's offices (which are located within the DOTARS buildings) and staff members.

Environmental performance reporting

Not relevant to the Commission's activities.

Correction of material errors in previous annual report

There were no material errors identified in the 2002–03 annual report.

Part 7 — Appendices

Appendix 1 – Determinations and decisions

This table summarises the determinations and decisions issued during the year. A fuller summary is at *Appendix 2*. Individual determinations and decisions are available on the Commission's website at www.iasc.gov.au.

ROUTE	AIRLINE	IASC NO.	PUBLICATION DATE	CAPACITY ALLOCATED (PER WEEK)	COMMENTS
China	Qantas	[2003] IASC 117	24-Oct-03	unlimited freight	Allocation of capacity
	Qantas	[2003] IASC 213	24-Oct-03	(0.75 units)**	Revocation of IASC/DET/9909
	Qantas	[2004] IASC 101*	2-Mar-04	2,135 seats	Allocation of capacity
Fiji	Virgin Blue	[2003] IASC 110	10-Jul-03	1,260 seats	Allocation of capacity
	Virgin Blue	[2004] IASC 201	1-Apr-04	—	Variation of [2003] IASC 110 to transfer capacity to Pacific Blue Australia
French Polynesia	Qantas	[2003] IASC 112	10-Jul-03	0.5 units	Renewal of IASC/DET/9819
Greece	Qantas	[2003] IASC 122	12-Nov-03	200 third party code share seats	Allocation of capacity
Hong Kong	Qantas	[2004] IASC 103	9-July-04	seven services beyond to the UK	Allocation of capacity. Draft determination subject to confirmation
India	Qantas	[2004] IASC 104	29-Jun-04	2,100 seats	Allocation of capacity
Indonesia	Qantas	[2003] IASC 207	10-Jul-03	—	Variation of IASC/DET/9813, [2002] IASC 113 and [2002] IASC 123 to permit Qantas to code share with Australian Airlines for passenger services
	Qantas	[2003] IASC 212	24-Oct-03	(one frequency and 1.65 equivalent units beyond Indonesia)	Revocation of IASC/DET/9902
	Qantas	[2004] IASC 203*	27-May-04	(2.2 B747 equivalents)	Revocation of [2000] IASC 117 and [2001] IASC 101
	Airnorth	[2004] IASC 110	15-Jun-04	unlimited	Allocation of unlimited regional capacity***
Italy	Qantas	[2003] IASC 113	8-Aug-03	600 third country code share seats	Allocation of capacity – code share with Cathay Pacific
	Qantas	[2003] IASC 217*	17-Dec-03	(four frequencies)	Revocation of [2000] IASC 118, [2000] IASC 120 and [2001] IASC 120

ROUTE	AIRLINE	IASC NO.	PUBLICATION DATE	CAPACITY ALLOCATED (PER WEEK)	COMMENTS
Japan	Qantas	[2003] IASC 208	10-Jul-03	—	Variation of IASC/DET/9804, IASC/DET/9910, [2001] IASC 107, [2001] IASC 112, [2001] IASC 116, [2002] IASC 104, [2002] IASC 108, [2002] IASC 116 & [2003] IASC 105 to permit Qantas to code share on Australian Airlines and vice versa for cargo sales only
	Qantas	[2004] IASC 202	27-Apr-04	—	Variation of [2001] IASC 107, [2001] IASC 116, [2002] IASC 104 and [2002] IASC 108 to permit continued code sharing on Cairns — Tokyo and Melbourne — Tokyo services until end June 2006
	Qantas	[2004] IASC 105	3-Jun-04	one B767-200 unit	Renewal of IASC/DET/9910
	Qantas	[2004] IASC 108	29-Jun-04	2.4 B767-200 units	Allocation of non-Tokyo capacity
Malaysia	Qantas	[2003] IASC 119	31-Oct-03	608 seats	Allocation of capacity
Nauru	Transpac Express	[2003] IASC 215	12-Dec-03		Commission initiated (one B737 equivalent) review leading to revocation of IASC/DET/9917
	HeavyLift Cargo	[2003] IASC 125	12-Dec-03	one B737 equivalent	Allocation of capacity
Netherlands	Qantas	[2004] IASC 111*	24-Jun-04	one all-cargo service	Allocation of freight capacity
New Caledonia	Transpac Express	[2003] IASC 215	12-Dec-03	(one B737 freighter)	Commission initiated review leading to revocation of IASC/DET/9918
	Transpac Express	[2003] IASC 215	12-Dec-03	(0.75 units) (one B737 freighter)	Commission initiated review leading to revocation of [2002] IASC 121 and IASC/DET/9918
	HeavyLift Cargo	[2003] IASC 126	12-Dec-03	one B737 freighter	Allocation of capacity

ROUTE	AIRLINE	IASC NO.	PUBLICATION DATE	CAPACITY ALLOCATED (PER WEEK)	COMMENTS
New Caledonia	Virgin Blue	[2003] IASC 129	12-Dec-03	0.75 units	Allocation of capacity
	Virgin Blue	[2004] IASC 201	1-Apr-04	—	Variation of [2003] IASC 129 to transfer capacity to Pacific Blue Australia
New Zealand	Virgin Blue	[2003] IASC 109	10-Jul-03	unlimited	Allocation of capacity
	Norfolk Jet Express	[2004] IASC 109	17-Jun-04	unlimited	Allocation of capacity
Papua New Guinea	HeavyLift Cargo	[2003] IASC 114	29-Aug-03	60 tonnes	Allocation of capacity
	HeavyLift Cargo	[2003] IASC 124	12-Dec-03	six tonnes	Allocation of capacity
	Pacific Air Express	[2003] IASC 123	12-Dec-03	12.5 tonnes	Allocation of capacity
Philippines	Qantas	[2003] IASC 210	24-Oct-03	400 seats	Variation of [2002] IASC 127 to allocate additional seats
	Qantas	[2004] IASC 106	3-Jun-04	229 seats	Renewal of IASC/DET/9911
Singapore	Qantas	[2003] IASC 206	10-Jul-03	—	Variation of IASC/DET/9914, [2000] IASC 112, [2000] IASC 115, [2001] IASC 102, [2001] IASC 122 and [2002] IASC 128 to permit Qantas to code share on Australian Airlines and vice versa for cargo sales
	Qantas	[2003] IASC 120	31-Oct-03	unlimited	Allocation of capacity
	Qantas	[2003] IASC 214	31-Oct-03	—	Revocation of IASC/DET/9914, [2000] IASC 112, [2000] IASC 115, [2001] IASC 102, [2001] IASC 122 and [2002] IASC 128
Solomon Islands	HeavyLift Cargo	[2003] IASC 116	29-Aug-03	50 tonnes	Allocation of capacity
	HeavyLift Cargo	[2003] IASC 127	12-Dec-03	25 tonnes	Allocation of capacity
	Transpac Express	[2003] IASC 215	12-Dec-03	(50 tonnes)	Commission initiated review leading to revocation of IASC/DET/9916
Switzerland	Qantas	[2003] IASC 209	8-Aug-03	(3.5 frequencies)	Revocation of [2003] IASC 102

ROUTE	AIRLINE	IASC NO.	PUBLICATION DATE	CAPACITY ALLOCATED (PER WEEK)	COMMENTS
Taiwan	Qantas	[2003] IASC 218*	17-Dec-03	(888 seats)	Revocation of IASC/DET/9912
	Qantas	[2004] IASC 107	3-Jun-04	unlimited freight	Renewal of IASC/DET/9921
Thailand	Qantas	[2003] IASC 118	24-Oct-03	seven third party code share services	Allocation of capacity
	Qantas	[2003] IASC 211	24-Oct-03	—	Variation of [2001] IASC 123 to permit Swiss International to code share on Qantas services
	Qantas	[2003] IASC 216*	17-Dec-03	(two all-cargo services)	Revocation of [2002] IASC 119 and [2003] IASC 101
United Kingdom	Qantas	[2004] IASC 102	1-Apr-04	four B747 services	Allocation of capacity
United States	Qantas	[2003] IASC 121	31-Oct-03	unlimited freight	Allocation of capacity
Vanuatu	Virgin Blue	[2003] IASC 111	10-Jul-03	720 seats	Allocation of capacity
	HeavyLift Cargo	[2003] IASC 115	29-Aug-03	25 tonnes	Allocation of capacity
	Transpac Express	[2003] IASC 215	12-Dec-03	(25 tonnes)	Commission initiated review leading to revocation of IASC/DET/9919
	HeavyLift Cargo	[2003] IASC 128	12-Dec-03	25 tonnes	Allocation of capacity
	Virgin Blue	[2004] IASC 201	1-Apr-04	—	Variation of [2003] IASC 111 to transfer capacity to Pacific Blue Australia

* Delegate's decision

** Figures in brackets indicate a reduction in capacity

*** These routes have a regional package in place whereby services to points other than Brisbane, Melbourne, Sydney and Perth have unrestricted capacity entitlements. Refer to the Register of Available Capacity.

Appendix 2 – Route by route summary of Commission determinations and decisions

This appendix contains a detailed summary of the Commission's determinations and decisions for 2003–04. As noted in *Appendix 1*, individual determinations and decisions can be viewed through the Commission's website at <http://www.iasc.gov.au>.

China

Qantas applied on 1 October 2003 for an allocation of unlimited capacity and frequency for all-cargo services on the China route. Qantas planned to introduce a twice weekly B747 freighter service between Australia and the United States via Singapore and Shanghai commencing in November 2003. On 24 October 2003, the Commission made Determination [2003] IASC 117 in favour of Qantas.

On 8 October 2003 Qantas applied to the Commission to revoke Determination IASC/DET/9909 which allocated 0.75 units of capacity per week on the China route. On 24 October 2003, in Decision [2003] IASC 213, the Commission revoked the determination.

On 17 February 2004, Qantas applied for an allocation of 2,135 seats of capacity per week in each direction between Australia and China, from the seats of capacity available to be operated by the designated airlines of Australia to and from Sydney, Melbourne, Brisbane and Perth. Qantas planned to introduce three passenger services per week between Sydney and Shanghai, commencing in the Northern Winter 2004 scheduling period. On 2 March 2004, the

Delegate, on behalf of the Commission, issued Determination [2004] IASC 101 in favour of Qantas.

Fiji

Virgin Blue had applied on 12 June 2003 for 1,260 seats of capacity per week on the Fiji route. The airline planned to commence services from October 2003, and to fully use the capacity by October 2004. The Commission issued, on 10 July 2003, Determination [2003] IASC 110 in favour of Virgin Blue, for five years. As Virgin Blue was a new entrant carrier, the Commission gave the airline flexibility in the introduction of its services, allowing it until November 2004 to fully utilise the capacity.

On 8 March 2004, Virgin Blue applied to transfer to Pacific Blue Airlines (Australia) (Pacific Blue Australia) capacity allocated to Virgin Blue on the Fiji route under Determination [2003] IASC 110, which allocated 1,260 seats per week. In its application, Virgin Blue stated that the transfer was sought because the Board of Virgin Blue Holdings had decided that it would be in the best interests of the business to conduct the international operations through a separate entity, being Pacific Blue Australia. It also said that this was a more appropriate arrangement for various reasons, including in terms of brand management and management of the separate contractual and regulatory relationships required for international operations.

Virgin Blue submitted that this was not a transfer that encouraged speculative activity. It noted that a separate New Zealand-based company, Pacific Blue Airlines (New Zealand), had been

established to operate trans-Tasman services. Pacific Blue Australia was a sister company proposed to conduct operations between Australia and destinations other than New Zealand. There were no significant changes to the business plan provided with Virgin Blue's original application to the Commission, which was built around the operational airline expertise currently within what was now the Virgin Australia Holdings Limited Group.

On 1 April 2004 the Commission issued Decision [2004] IASC 201, varying Determination [2003] IASC 110 to transfer the capacity as requested. The Commission included a condition to discourage any speculative activity involving the allocation of capacity. The condition is that 'until 31 March 2005, the allocation of capacity hereunder is conditional upon Pacific Blue Australia remaining, except with the prior approval of the Commission, a wholly owned subsidiary in the Virgin Australia Holdings Limited Group'.

French Polynesia

On 13 June 2003, Qantas applied for a renewal of Determination IASC/DET/9819 which allocated 0.5 units of capacity per week on the France Route 2 (French Polynesia). On 10 July 2003, the Commission issued Determination [2003] IASC 112 allocating the capacity.

Greece

On 27 October 2003, Qantas applied for an allocation of 200 third party code share seats per week on the Greece route. Qantas planned to code share on daily Gulf Air services between Singapore and Athens via Bahrain commencing on 23 November 2003. On 12 November 2003, the Commission issued Determination [2003] IASC 122 in favour of Qantas.

Hong Kong

On 18 May 2004, Qantas applied for an allocation of seven services per week beyond Hong Kong to the United Kingdom. Qantas planned to operate three B747-400 services per week between Sydney and Hong Kong and beyond to London with effect from November 2004. The airline intended to increase its flying on this routing to four services per week in November 2005 and to expand to daily operations from April 2006. Qantas also sought authorisation for British Airways to code share on the services under the existing code share agreement between the two carriers.

On 9 July 2004, the Commission issued Draft Determination [2004] IASC 103 proposing to allocate to Qantas the seven services as requested. The determination was proposed to be for five years. The draft determination was circulated to interested parties inviting comment. The Commission decided to issue a draft determination because it considered that the Qantas application raised significant issues, which meant that the allocation of capacity was not straightforward, even though Qantas was the only applicant for the capacity.

The Commission found that Qantas was reasonably capable of obtaining the necessary approvals to operate on the Hong Kong route as proposed and of implementing its application. However, the Commission understood that rights for Australian carriers to operate beyond Hong Kong to the UK were only recently secured under the bilateral arrangements, after years of negotiation. Given the difficulty in securing rights on this sector, the Commission was concerned at the implications for the scope for future competition on the route if there was no further expansion of the limited beyond-Hong Kong bilateral opportunities for a long period, as seemed likely, and Qantas was allocated all seven services, three of which could not be

operated for nearly two years. Such an outcome would have the effect of precluding any other prospective Australian carrier from having the opportunity of operating in this important market for the foreseeable future. Any other Australian carrier operating to Hong Kong in the future would be obliged to terminate services there and could not compete directly with Qantas or foreign carriers for traffic on the Australia – UK route over Hong Kong, or for Hong Kong – UK traffic.

Legal advice obtained by the Commission indicated that it was within the scope of its powers under the Act to not allocate capacity in circumstances where the Commission had otherwise found there to be a public benefit associated with the allocation of the capacity. The Commission considered that it had this discretion under section 7(1) of the Act, provided the Commission considered that there were sufficiently important considerations which would justify such a course of action. In this case, the Commission considered that there was a possibility that benefits might ultimately be maximised through the temporary withholding of some of the capacity (the three services which could not be operated until April 2006), and its allocation nearer to the time when it could actually be operated, either to Qantas (if it applied), or to another applicant who may apply for that capacity at a later time. If no such other applicant emerged, or did but the Qantas proposal was found to deliver greater public benefits, there would have been no lessening of public benefit through the temporary withholding of the allocation of such capacity, as Qantas would not be capable of implementing the latter part of its application until late March 2006 and no public benefits could arise prior to that time. The Commission considered that such a consideration was within the scope and purpose of the Act, noting that the object of the Act is to enhance the welfare of Australians by promoting

economic efficiency through competition in the provision of international air services.

In this regard, the Commission noted paragraph 3.2 of the Minister's policy statement which states that: 'The Commission should, in any adjudication of applications for capacity allocation, seek to maximise the benefits to the public to be gained from the operation of the capacity, assessed in accordance with the Act and against applicable criteria set out in this policy statement.' In this case, there was only one application, so the Commission was not able to compare benefits that might arise from an alternative proposal for the use of the capacity.

The Commission considered that allocating only four services to Qantas, and not allocating the three services which were not permitted to be operated until late March 2006, would give Qantas commercial certainty to operate the services it proposed to implement through to November 2005. However, it would mean the carrier would need to reapply at a later time for the remaining capacity, unless another carrier had already applied for the remaining capacity prior to a new application from Qantas, in which case Qantas could lodge a competing application.

If a partial allocation was to be made at this point, there would be the possibility that Qantas might not ultimately obtain all seven services. The Commission therefore considered whether the operation of less than the full seven services per week would not be commercially worthwhile over the longer term. If so, there could not be greater benefit associated with the capacity being split between two Australian carriers compared with it being allocated to a single carrier.

The Commission concluded that a daily service would represent a desirable level of operation on this route from a single carrier commercial viewpoint. However, it inferred from the fact that

Qantas had sought to commence services with three services per week, nearly two years before it would be possible to operate a daily frequency, that three services per week represented a commercially sustainable level of operations. Qantas could have proposed to operate from the outset the available fourth weekly frequency but sought to defer for up to a further year the operation of this frequency. Had Qantas considered that only a daily service was commercially sustainable, it could have proposed not to implement any flights until it could commence a daily service from the time when all seven services were available for operation.

However, in considering whether to withhold any capacity from Qantas, the Commission needed to consider whether there was a realistic possibility that another Australian carrier might seek to enter the Hong Kong – UK route in the relatively near future. On the anecdotal facts known to the Commission, it was unlikely that this would occur.

After taking all relevant factors into account, the Commission proposed to allocate to Qantas all of the seven services per week of capacity sought. The Commission considered the possibility of making an interim (three year) allocation to Qantas for this capacity, as at the renewal stage any new applicants for the capacity could compete for it on public benefit criteria which did not favour the incumbent. However, the Commission recognised that to do so would mean that the final three of the total of seven services could be used in practice for only a little over a year before the end of the period of the determination. This short duration would not enable Qantas to obtain a reasonable return on the capital invested in providing the final three services, before the capacity was again open to contest. The Commission therefore proposed to allocate the capacity for a period of five years.

The Commission also proposed to provide the commercial discretion which Qantas sought for the timing of the implementation of its services, as there had been no other applicant that might have sought to use the capacity sooner, nor was there likely to be in the near future. In doing so, however, the Commission said that it would not wish to see a situation develop whereby an established carrier engaged in a process of obtaining and effectively warehousing capacity across different routes, by arguing that it needed to secure capacity well ahead of when it can or is to be used, in order to give it commercial certainty. Such a process would preclude scope for future new entry by carriers which may not have immediate operating plans or the capability to operate the services immediately (and therefore may not be able to compete successfully for the capacity at this stage) but which may be in a position to seek the capacity in a year or two. Such warehousing would not be consistent with the principles of the Act and policy statement.

India

On 17 February 2004, Qantas applied for an allocation of 2,100 seats per week on the India route. Qantas planned to introduce three B747 services per week between Sydney and Mumbai from September 2004. It therefore initially required 1,350 seats to operate these services with B747-300 aircraft with a seating configuration of 450 seats. The airline planned to add a further two B747 services per week in 2005. A competing application for the capacity was received from Backpackers Xpress. A brief summary of this case is provided here. Fuller details are included in the body of this report.

The Commission initially assessed whether the applicants were reasonably capable of obtaining the necessary approvals and of implementing their applications. Qantas was found to be

capable of doing so. The Commission concluded that Backpackers Xpress was not reasonably capable of achieving these requirements at the time of assessment. The Commission also conducted an assessment of the competing proposals against the paragraph 5 criteria in the Minister's policy statement. The assessment showed that the Qantas proposal offered greater public benefits than did the Backpackers Xpress application. The main factor underlying this conclusion was that Qantas planned to operate direct terminating services to India, compared with Backpackers Xpress which would operate via Bangkok enroute to India, with flights continuing on to the UK and Europe.

The Commission issued a draft determination proposing to allocate all of the available capacity to Qantas. Subsequently, on 29 June 2004, the Commission issued Determination [2004] IASC 104 in favour of Qantas allocating the capacity sought.

Indonesia

Qantas applied to the Commission on 11 June 2003 to vary Determinations IASC/DET/9813, [2002] IASC 113 and [2002] IASC 123, which allocate capacity on the Indonesia route, to enable it to operate joint passenger services with Australian Airlines. Previously the Commission had approved joint services by the two carriers for cargo sales only (Decision [2003] IASC 203). On 10 July 2003, the Commission issued Decision [2003] IASC 207, varying the determinations as requested.

On 8 October 2003, Qantas applied to the Commission to revoke Determination IASC/DET/9902 which allocated one frequency and 1.65 equivalent units of capacity per week beyond Indonesia. On 24 October 2003, in Decision [2003] IASC 212, the Commission revoked the determination.

Qantas applied to the Commission on 19 May 2004 to revoke Determinations [2000] IASC 117 and [2001] IASC 101, which together allocated 2.2 B747 equivalent services per week on the Indonesia route. On 27 May 2004, in Decision [2004] IASC 203, the Delegate, on behalf of the Commission, revoked the determinations.

On 28 May 2004, Capiteq Limited, trading as Airnorth Regional (Airnorth), applied for an allocation of 150 seats per week on the route between Darwin and Kupang, Indonesia. Airnorth proposed to initially operate twice weekly services using a 30 seat Brasilia aircraft. The airline sought permission for the services to be conducted under a code share arrangement with Merpati Nusantara Airlines of Indonesia.

Airnorth had not previously operated scheduled international services, although it had flown international charter services, as well as being an established domestic operator. After assessing detailed commercial information provided by Airnorth, the Commission concluded that Airnorth had the financial capability, resources, skills and experience necessary to implement its application. The Commission was also satisfied that Airnorth was reasonably capable of obtaining the approvals necessary to operate.

The Commission concluded that an allocation of capacity to Airnorth on the Indonesia route would be of benefit to the public. On 15 June 2004, the Commission issued an interim (three year) Determination [2004] IASC 110 in favour of Airnorth, allocating capacity for operations between points in Australia, except Sydney, Melbourne, Brisbane and Perth, and authorised points in Indonesia. Code sharing with Merpati Nusantara Airlines was authorised.

Italy

Qantas applied on 13 June 2003 for an allocation of 600 seats per week of third country code share capacity on the Italy route. Qantas had decided to suspend its two B747 services per week to Rome from 7 September 2003 due to unsustainable financial losses. To continue serving the Italy market, Qantas proposed to offer four code share services per week on Cathay Pacific flights between Hong Kong and Rome from 9 September 2003. On 8 August 2003, the Commission issued a determination in favour of Qantas ([2003] IASC 113) allocating the capacity requested.

On 11 December 2003, Qantas applied to the Commission to revoke Determinations [2000] IASC 118, [2000] IASC 120 and [2001] IASC 120 which together allocated four frequencies on the Italy route. The application followed the decision by Qantas to cease serving Italy in its own right from early September 2003. On 17 December 2003, in Decision [2003] IASC 217, the Commission revoked the determinations.

Japan

On 11 June 2003, Qantas applied to the Commission to vary Determinations IASC/DET/9804, IASC/DET/9910, [2001] IASC 107, [2001] IASC 112, [2001] IASC 116, [2002] IASC 104, [2002] IASC 108, [2002] IASC 116 and [2003] IASC 105, which allocated capacity on the Japan route, to enable it to operate joint services with Australian Airlines for cargo sales only. On 10 July 2003, the Commission decided, in Decision [2003] IASC 208, to permit Qantas to code share with Australian Airlines as proposed.

Qantas applied to the Commission on 19 March 2004 for an extension of authorisations permitting Japan Airlines (JAL) to code share on Qantas services between Tokyo and Cairns and between Tokyo and Melbourne for the remaining period of several determinations.

Determinations [2001] IASC 107, [2001] IASC 116 and [2002] IASC 104 allocated 1.2, 2.4 and 4.6 B767-200 units of weekly capacity respectively. Decision [2002] IASC 218 of 31 May 2002 had varied the conditions of these determinations to permit JAL to code share on Qantas services to Melbourne until 30 June 2004. Determination [2002] IASC 108 of 22 April 2002, which renewed Determination IASC/DET/9701, allocated 45.6 B727-200 units and authorised a continuation of the code share arrangements between Tokyo and Cairns, also until 30 June 2004.

The Qantas application attracted submissions supportive of an extension of the code share arrangements. On the other hand, the Australian Competition and Consumer Commission raised concerns about the arrangements, submitting that they were likely to have a negative impact on fare and destination competition on the Japan route.

At the time of its previous review of the code share arrangements in April 2002, the Commission concluded that the:

- evidence from the operation of the code share to that time suggested that fare levels had not risen and that traffic levels continued to rise. However, it was unclear whether these results had been achieved despite the code share as much as because of it.
- Commission was unable to assess the impact on the route of the loss of Ansett International and All Nippon from the Japan market and the effects of the events of September 11. The Commission expected

that, in the absence of Ansett International and All Nippon, there would be a reduced marketing effort, less downward pressure on air fares, reduced choice of product and travel time options. The Commission was concerned that there would be less incentive for Qantas and JAL to offer competitive air fares to consumers on the route and to market the route as aggressively as they may otherwise have done.

- evidence was that, without code share approval, services to Queensland, particularly Cairns, may have been reduced and that this would be likely to lead to a reduced level of public benefits compared with allowing the code share to continue. The Commission was conscious of the fact that Qantas was making use of new slots at Narita runway B with the introduction of its double daily B767-300 services. Ensuring the retention of these slots for Australia was important from a long term tourism viewpoint.

Taking these factors into account, the Commission considered, at that time, that it should authorise a continuation of the code share arrangement for a further two years until June 2004. The Commission wished to review the situation further once the effects of September 11 could be seen in a longer term context, and the impact of the withdrawal of Ansett International and All Nippon was clearer.

Reviewing the code share arrangements in April 2004, the Commission found that the situation was still unclear because of the effects of the Iraq war and, to a greater extent, SARS on Japanese outbound travel. Travel between Japan and Australia had declined, with a significant fall in visitors being partly offset by an increase in Australian resident travel. On the other hand, capacity provided by the direct carriers between

Australia and Japan had increased from 21,250 weekly seats in April 2002 to 22,919 weekly seats at the time of the Commission's latest consideration. Also, confidential data reported by Qantas on yields on the Cairns – Tokyo, Brisbane – Tokyo and Melbourne – Tokyo routes indicated that overall yields had continued to decline.

Traffic forecasts by the Tourism Forecasting Council suggested that visitor arrivals from Japan would grow by 0.8 per cent in 2004 on 2003 arrivals, which were down by 10.5 per cent on the previous year. However, anticipated new forecasts were expected to indicate that Japanese arrivals would grow strongly in 2004, but not quite sufficient to restore 2002 levels. Qantas suggested that arrivals were not forecast to surpass 2002 levels until 2006. Qantas submitted that current forward bookings were down on 2003 levels. The Queensland Government included forecasts for Cairns and North Queensland indicating that visitor traffic would grow at an annual rate of 4.5%.

The Commission considered that the inbound traffic level for the next year or so remained uncertain, but was unlikely to return to 2002 levels until possibly 2005 at the earliest. This, combined with the general increase in capacity on the route, and the prospect, at least in the short term, of increased capacity on the Cairns route and an increase in capacity on the Melbourne route, would lead to a continued downward pressure on yields. Additional downward pressure on yields would come from the many destinations competing in the Japanese outbound market.

Against the backdrop of the weak Japanese travel market over the previous year or more, the Commission found it likely that the code share arrangement had worked to the public benefit by assisting in the maintenance of

service levels to both Cairns and Melbourne. Without the arrangement, there may possibly have been a withdrawal of some services.

Advice from a number of submitters suggested that, if the Commission were not to continue its approval of the code share arrangements, there was a strong likelihood that JAL would not introduce services to Cairns or Melbourne in place of being able to code share. The Commission accepted this was likely to be the case, given the fairly weak growth outlook for the Japan route. Cairns and Melbourne would be left with Qantas services alone, and without the support of JAL's distribution network in Japan, the source of 90% of the traffic on the route. This may in turn jeopardise the viability of Qantas' services. This would clearly not be to the benefit of the travelling public. Further, the loss of services could be expected to lead to a significant loss of tourism to Cairns and the surrounding North Queensland region and possibly also Melbourne.

The Commission concluded that the overall situation was not greatly changed from when the Commission last reviewed the code share arrangements in April 2002. The Commission considered that there was no lessening of public benefit from allowing Qantas to continue to use the relevant capacity in code share services with JAL. As a result the Commission authorised the code share for an additional two years until June 2006. This was a shorter period than Qantas had sought, because the Commission retained its concern about the underlying potential for anti-competitive impacts from the code share. If the market continued to recover, and did so more strongly than anticipated, then scope may appear for the code share partners to exploit a lack of competitive tension between them, particularly if the absence of other airlines in the market continued.

The Commission accepted suggestions by the Queensland Government and Qantas for a revised condition requiring a minimum number of seats to be operated on the Cairns – Tokyo route rather than a minimum frequency requirement. This conclusion recognised the need to provide Qantas with the flexibility to introduce new aircraft on the route, while preserving a level of service to Cairns which protected the tourism interests of the region.

On 27 April 2004, the Commission issued Decision [2004] IASC 202 in these terms.

On 17 May 2004, Qantas applied for a renewal of Determination IASC/DET/9910, which allocated one B767-200 unit per week in each direction on the Japan route to provide services to and from Kansai. On 3 June 2004, the Commission issued Determination [2004] IASC 105 allocating the requested level of capacity.

On 19 May 2004, Qantas applied for an allocation of 2.4 B767-200 units of capacity per week on the Japan route. The capacity was proposed to be used by Australian Airlines to operate two B767-300 services weekly between Cairns and Sapporo. The services would operate only during the Northern Winter scheduling period due to the seasonal nature of the traffic. The Commission issued a determination in favour of Qantas ([2004] IASC 108) on 29 June 2004 allocating the capacity requested, for use in the Northern Winter scheduling periods during the period of the determination.

Malaysia

On 17 October 2003, Qantas applied for an allocation of 608 seats per week on the Malaysia route to be utilised by Australian Airlines. On 31 October 2003, the Commission made Determination [2003] IASC 119 in favour of Qantas. This additional capacity enabled an increase in the number of services to be operated by Australian Airlines to four per week.

Nauru

On 3 November 2003, the Commission published a notice calling for submissions about a review of determinations made in favour of Transpac Express Pty Ltd (Transpac). These determinations had allocated capacity on several routes, including the Nauru route. The notice also called for applications for, or submissions about, allocation of all or part of the capacity that was the subject of the review, in anticipation of the Commission possibly revoking the determinations.

On 28 November 2003, the Commission found Transpac to be in breach of Determination IASC/DET/9917, which allocated one B737 equivalent per week. Transpac had failed to commence operations on the route by the deadline of 31 October 2003. The Commission issued Draft Decision [2003] IASC 215 proposing to revoke the determination. On 12 December 2003, having received no submissions on the draft decision, the Commission finalised Decision [2003] IASC 215 revoking the determination.

On 19 November 2003, in response to a notice calling for applications for capacity in the context of a review of Transpac's determinations,

HeavyLift Cargo Airlines Pty Ltd (HeavyLift) applied for an allocation of one frequency with any aircraft type, not exceeding the capacity of a B737, on the Nauru route.

On 12 December 2003, the Commission issued Interim Determination [2003] IASC 125 in favour of HeavyLift, allocating this capacity for three years.

Netherlands

On 8 June 2004, Qantas applied for an allocation of one all-cargo service per week on the Netherlands route. Qantas proposed to operate two services per week between Sydney and Amsterdam via Shanghai, using an aircraft wet-leased from Atlas Air. Under an earlier determination, Qantas already had an allocation of one all-cargo service per week.

On 24 June 2004, the Delegate, on behalf of the Commission, issued Determination [2004] IASC 111 allocating the requested level of capacity.

New Caledonia

On 3 November 2003, the Commission published a notice calling for submissions about a review of determinations held by Transpac. These determinations had allocated capacity on several routes, including the New Caledonia route. The notice also called for applications for, or submissions about, allocation of all or part of the capacity that was the subject of the review, in anticipation of the Commission possibly revoking the determinations.

On 12 December 2003 the Commission found Transpac to be in breach of Determination [2002] IASC 121, which allocated 0.75 units of passenger capacity per week, and Determination IASC/DET/9918, which allocated one B737 freighter service per week. Transpac had failed to commence operations on the route

by the deadline of 31 October 2003. The Commission issued Decision [2003] IASC 215 revoking the determinations.

On 18 November 2003, Virgin Blue applied for an allocation of 0.75 units of passenger capacity for operation on the New Caledonia route. Virgin Blue proposed to operate up to three services per week using B737-700 aircraft and/or B737-800 aircraft. On 12 December 2003, the Commission issued Determination [2003] IASC 129 in favour of Virgin Blue, allocating 0.75 units of capacity per week.

On 19 November 2003, Heavylift applied for an allocation of the equivalent of one B737 freighter per week in each direction on the France Route 3 (New Caledonia) route.

On 12 December 2003, the Commission issued Interim Determination [2003] IASC 126 to Heavylift granting the capacity for three years.

On 8 March 2004, Virgin Blue applied to transfer to Pacific Blue Airlines (Australia) (Pacific Blue Australia) capacity allocated to Virgin Blue on the New Caledonia route under Determination [2003] IASC 129, which allocated 0.75 units of capacity on the France Route 3 (New Caledonia). On 1 April 2004, the Commission issued Decision [2004] IASC 201 agreeing to vary Determination [2003] IASC 129, but adding the following condition: 'until 31 March 2005, the allocation of capacity hereunder is conditional upon Pacific Blue Australia remaining, except with the prior approval of the Commission, a wholly owned subsidiary in the Virgin Australia Holdings Limited Group'.

New Zealand

Virgin Blue had applied on 12 June 2003 for an allocation of unlimited capacity on the New Zealand route, with services planned to commence from October 2003. Virgin Blue stated that the extent of its operations on this route was contingent on the outcome of consideration by regulatory authorities of the proposed Qantas/Air New Zealand/Air Pacific alliance. Virgin Blue proposed to expand capacity on the trans-Tasman fairly quickly, if the regulatory outcome was satisfactory to it. Virgin Blue advised that it would provide its international services under a new operating name, to be announced in the near future. On 10 July 2003, the Commission issued Determination [2003] IASC 109 in favour of Virgin Blue.

Norfolk Jet Express (Norfolk Jet) applied on 3 May 2004 for an allocation of unlimited capacity on the New Zealand route. Norfolk Jet proposed to operate twice weekly services between Norfolk Island and Auckland using Fokker 100 aircraft leased from Alliance Airlines. Submissions about the application were received from the Administration of Norfolk Island and from Endeavour Airlines of Norfolk Island.

Norfolk Jet had been providing services between mainland Australian ports and Norfolk Island for approximately seven years, but did not operate international services. The proposal before the Commission was to extend, in effect, Norfolk Jet's domestic operations, using the Alliance Airlines aircraft, to Auckland. The Commission noted that Alliance Airlines already had an Air Operator's Certificate that permitted some international operations.

Norfolk Jet provided the Commission with commercial-in-confidence material supporting its claim that it was capable of implementing international services. This information included projected traffic levels on the route, fare levels and marketing expenditure, as well as profit and loss projections.

Norfolk Jet forecast that it would generate significant new traffic, as well as diverting some traffic from existing Air New Zealand services, through offering more convenient travel times and fares. In particular, it proposed to market packages to visitors to Australia involving Norfolk Island, Auckland and Sydney, Melbourne or Brisbane.

Norfolk Jet had extensive experience in marketing Norfolk Island and had acquired a detailed understanding of the traffic to and from the island. Its projected traffic and revenue levels were based on its detailed knowledge of the Norfolk Island visitor and resident market. The Commission considered that the airline's forecasts were reasonable, although may have been somewhat optimistic depending on the extent of any competitive responses from Air New Zealand.

The Commission noted the concerns of the Norfolk Island Administration about Norfolk Jet's proposals. The Commission considered that Norfolk Jet's financial situation could have been stronger, but noted that its financial circumstances had improved considerably since Alliance Airlines withdrew its services to the Australian mainland. The Commission noted that the airline was an experienced, established operator and was satisfied that Norfolk Jet was reasonably capable of implementing its planned services to New Zealand. The Act encourages the use of capacity available to Australian carriers which are reasonably capable of

implementing its services, and the object of the Act is to promote economic efficiency through competition in the provision of international air services. The continued operation on the route of Air New Zealand, a large established international carrier, seemed unlikely to be threatened by the entry of Norfolk Jet.

In relation to the concerns of Endeavour Airlines about the allocation of capacity to Norfolk Jet, the Commission noted that capacity was not limited on the route. This meant that an allocation of capacity to Norfolk Jet did not preclude Endeavour Airlines from applying for and being granted capacity on the New Zealand route.

On 17 June 2004, the Commission issued Determination [2004] IASC 109 in favour of Norfolk Jet, allocating capacity between Norfolk Island and New Zealand for ten years from the determination date. Following changes during the year to the Minister's policy statement, the Commission may now make a ten year determination where capacity is not limited.

Papua New Guinea

HeavyLift had applied on 4 June 2003 for an allocation of 60 tonnes of freight capacity per week on the Australia – Papua New Guinea (PNG) route. On 29 August 2004 the Commission issued an Interim Determination [2003] IASC 114 (three years) in favour of HeavyLift.

On 17 October 2003, Pacific Air Express (Australia) Pty Ltd applied for an allocation of 20 tonnes of freight capacity per week on the PNG route. Pacific Air Express planned to operate all-cargo services between Lae and Brisbane

using an Antonov AN-12 aircraft with a capacity of 12.5 tonnes. A competing application for the capacity was received from HeavyLift. This airline proposed to use the capacity to operate services between Brisbane and Port Moresby, using either a B727 (22 tonne) aircraft operating twice per week, or a Shorts Belfast (32 tonne) aircraft. Subsequently, Pacific Air Express amended its application to seek only 12.5 tonnes of capacity.

As Pacific Air Express was a prospective new entrant, the Commission carried out a detailed investigation of its proposals, to establish whether the airline was reasonably capable of obtaining the approvals necessary to operate and of implementing its application. The Commission concluded that Pacific Air Express was likely to be capable of implementing a once per week service. Whether its services were sustainable in the longer term depended on a range of factors, including the impact of competition from HeavyLift if that carrier introduced scheduled services as planned.

The Commission noted that HeavyLift had spare capacity (16 tonnes) available from an earlier allocation but, even with the 20 tonnes sought in this application, would have insufficient capacity to operate a twice weekly B727 service as planned. However, an additional six tonnes would be sufficient to support a once weekly operation.

The Commission assessed the applications from the two carriers against the relevant public benefit criteria contained in paragraph 5 of the Minister's policy statement. The Commission found that the HeavyLift proposal offered comparatively greater trade benefits than did the Pacific Air Express proposal.

Against the competition criterion, the Commission concluded that the greatest competition gains would be achieved through HeavyLift having scope to introduce a weekly B727 service on the Port Moresby sector, and Pacific Air Express

having the ability to start a weekly AN-12 service to Lae. This would involve a total allocation of 18.5 tonnes per week (12.5 to Pacific Air Express and six to HeavyLift) of the 20 tonnes available for allocation, the most that could be allocated under any scenario. The Commission considered that the allocation of capacity to both carriers would deliver greater competition gains than allocating capacity to just one of the two applicants. The Commission also considered that the entry of both carriers would have a positive impact on the Australian aviation industry.

On 12 December 2003, the Commission made an Interim Determination [2003] IASC 123 granting 12.5 tonnes of freight capacity per week to Pacific Air Express. It also issued Interim Determination [2003] IASC 124, allocating six tonnes of freight capacity per week to HeavyLift.

Philippines

Qantas applied on 1 October 2003 for a variation of Determination [2002] IASC 127. Qantas sought to increase the allocation of capacity under the determination by 400 seats per week, from the allocated 229 seats per week. Qantas planned to use the extra capacity, together with capacity it held under two other determinations on the route, to operate three B747-300 services per week. These flights would replace the smaller capacity B767-300 aircraft currently flying the route four times per week. The aircraft change was planned for implementation from 27 October 2003. On 24 October 2003, in Decision [2003] IASC 210, the Commission agreed to vary the determination as requested.

Qantas applied for a renewal of Determination IASC/DET/9911. On 3 June 2004, the Commission issued a fresh Determination [2004] IASC 106 in favour of Qantas, allocating 229 seats per week.

Singapore

On 23 May 2003, Qantas applied to the Commission to vary Determinations IASC/DET/9914, [2000] IASC 112, [2000] IASC 115, [2001] IASC 102, [2001] IASC 122 and [2002] IASC 128 to allow code sharing on Australian Airlines services for cargo sales only. On 10 July 2003, the Commission issued Decision **[2003] IASC 206**, authorising the code share arrangements.

On 17 October 2003, Qantas applied for an allocation of unlimited capacity and frequency for operation on the Australian route under the Australia – Singapore air services arrangements. On 23 September 2003, the Australian and Singapore Governments had concluded new air services arrangements which entitled Australian designated carriers to determine the capacity, frequency and aircraft type used to provide services on routes available under the arrangements.

Qantas was seeking to consolidate its existing six determinations allocating passenger capacity on the route to a single determination, and to concurrently revoke the existing determinations. Qantas sought flexibility for the capacity to be able to be used directly by Australian Airlines, a wholly owned subsidiary of Qantas, or in joint services with Qantas. Qantas also sought authority to continue to use its capacity in joint services with British Airways, Finnair, Gulf Air and Swiss International.

Qantas already had an allocation of unlimited freight capacity on the Singapore route (Determination [2002] IASC 118) and wished to retain this on the basis that the routes available under the new air services arrangements were

more extensive for all-cargo services than for combined passenger and cargo services.

On 31 October 2003, the Commission issued Determination **[2003] IASC 120** in favour of Qantas allocating unlimited capacity and frequency for operation on the Singapore route. Concurrently, in Decision **[2003] IASC 214**, the Commission revoked Determinations IASC/DET/9914, [2000] IASC 112, [2000] IASC 115, [2001] IASC 102, [2001] IASC 122 and [2002] IASC 128 which each allocated an amount of capacity on the Singapore route.

Solomon Islands

HeavyLift had applied on 4 June 2003 for an allocation of 50 tonnes of freight capacity per week on the Australia – Solomon Islands route. On 29 August 2003, the Commission issued an Interim Determination **[2003] IASC 116** (three years) in favour of HeavyLift.

On 19 November 2003, HeavyLift applied for an allocation of 25 tonnes of freight capacity per week on the Solomon Islands route.

On 12 December 2003, the Commission issued Interim Determination **[2003] IASC 127** to HeavyLift allocating this capacity for three years.

On 3 November 2003, the Commission published a notice calling for submissions about a review of determinations held by Transpac. These determinations had allocated capacity on several routes, including the Solomon Islands route. The notice also called for applications for, or submissions about, allocation of all or

part of the capacity that was the subject of the review in anticipation of the Commission possibly revoking the determinations.

On 12 December 2003, the Commission found Transpac to be in breach of Determination IASC/DET/9916, which allocated 50 tonnes of freight capacity per week. Transpac had failed to commence operations on the route by the deadline of 31 October 2003. The Commission issued Decision **[2003] IASC 215**, revoking the determination.

Switzerland

Qantas applied to the Commission on 16 July 2003 to revoke Determination [2003] IASC 102, which allocated 3.5 units of capacity per week on the Switzerland route. On 8 August 2003, in Decision **[2003] IASC 209**, the Commission revoked the determination.

Taiwan

On 11 December 2003, Qantas applied to the Commission to revoke Determination IASC/DET/9912, which allocated 888 seats per week on the Taiwan route. Qantas had since begun serving Taiwan on code share services with Eva Air. On 17 December 2003, in Decision **[2003] IASC 218**, the Commission revoked the determination.

Qantas applied for a renewal of Determination IASC/DET/9921. On 3 June 2004, the Commission issued a fresh Determination **[2004] IASC 107** in favour of Qantas, allocating unlimited freight capacity on the Taiwan route.

Thailand

On 9 October 2003, Qantas applied to the Commission for an allocation of seven third party code share services per week on the Thailand route, for code sharing with Swiss International between Bangkok and Zurich. The Commission issued Determination **[2003] IASC 118** in favour of Qantas on 24 October 2003.

Qantas also applied on 9 October 2003 for a variation of Determination [2001] IASC 123, to permit Swiss International to code share on Qantas services between Thailand and Australia. On 24 October 2003, the Commission issued Decision **[2003] IASC 211** varying the determination as requested.

Qantas applied to the Commission on 11 December 2003 to revoke Determinations [2002] IASC 119 and [2003] IASC 101, which each allocated one all-cargo service per week on the Thailand route. On 17 December 2003, in Decision **[2003] IASC 216**, the Delegate of the Commission revoked the determinations.

United Kingdom

Qantas applied on 17 February 2004 for an allocation of seven services per week on the United Kingdom (UK) route. Qantas planned to commence three B747 services per week between eastern Australia and London in November 2004. Four additional flights were planned to be phased in during 2005, so that all the capacity sought would be fully utilised

by November 2005. Qantas advised that the intermediate points to be served would be decided at a later time. Qantas sought approval for British Airways to code share on the proposed services, under the terms of the Restated Joint Services Agreement between the two airlines.

In response to the Qantas application, the Commission published a notice on 23 February 2004 inviting other applications for all or any part of the capacity sought by Qantas. An application for capacity from Backpackers Xpress was received on 24 March 2004. Backpackers Xpress sought an allocation of three services per week on the UK route and planned to commence services from November 2004, using B747 aircraft.

As Backpackers Xpress had sought only three services per week on the UK route, compared with the seven services sought by Qantas and available for allocation, this meant that four services were not contested between the two carriers. The Commission therefore considered the Qantas application only in respect of these four services per week. Early consideration of the application for four services was consistent with the Commission's practice of dealing with matters before it as quickly as possible in accordance with the requirements of the Act and policy statement. The Commission also noted advice from Qantas that it had obtained landing slots necessary to operate the seven services per week it had sought. The allocation of capacity as soon as possible would provide Qantas with certainty about the ability to utilise four of the landing slots.

The contested applications for the remaining three services per week would be the subject of a separate and later determination by the Commission.

On 1 April 2004, the Commission issued Determination [2004] IASC 102, allocating to Qantas four of the seven services per week requested. Three of the four services allocated in this determination were required to be commenced by 30 November 2004, with all of the capacity to be fully utilised by 30 April 2005. Code sharing with British Airways was authorised.

United States

On 17 October 2003, Qantas applied for an allocation of unlimited all-cargo capacity and frequency for operation on the United States route. Qantas planned to introduce a twice weekly B747-400F freighter service between Australia and the United States via Singapore and Shanghai. On 31 October 2003, the Commission issued Determination [2003] IASC 121 in favour of Qantas, allocating the requested level of capacity.

Vanuatu

Virgin Blue had applied to the Commission on 12 June 2003, for 720 seats of capacity per week in each direction on the Australia – Vanuatu route. As Virgin Blue had not previously operated international services, the Commission undertook a detailed assessment of the airline's ability to do so successfully. The Commission concluded that the carrier had the financial capacity, resources, skills and experience necessary to implement its proposals successfully. On 10 July 2003 the Commission made Determination [2003] IASC 111 in favour of Virgin Blue, allocating the capacity sought. The determination was for five years from the date of the determination.

On 4 June 2003, HeavyLift applied for an allocation of 25 tonnes of freight capacity per week on the Australia – Vanuatu route. On 29 August 2003, the Commission issued an Interim Determination **[2003] IASC 115** (three years) in favour of HeavyLift.

On 3 November 2003, the Commission published a notice calling for submissions about a review of determinations held by Transpac. These determinations had allocated capacity on several routes, including the Vanuatu route. The notice also called for applications for, or submissions about, allocation of all or part of the capacity that was the subject of the review in anticipation of the Commission possibly revoking the determinations.

On 12 December 2003, the Commission found Transpac to be in breach of Determination IASC/DET/9919, which allocated 25 tonnes of freight capacity on the Vanuatu route. Transpac had failed to commence operations on the route by the deadline of 31 October 2003. The Commission issued Decision **[2003] IASC 215**, revoking the determination.

On 19 November 2003, Heavylift applied for an allocation of 25 tonnes of freight capacity per week on the Vanuatu route. On 12 December 2003, the Commission issued Interim Determination **[2003] IASC 128** to Heavylift granting this capacity for three years.

On 8 March 2004, Virgin Blue applied to transfer to Pacific Blue Airlines (Australia) (Pacific Blue Australia) capacity allocated to Virgin Blue on the Vanuatu route, under Determination **[2003] IASC 111** which allocated 720 seats per week.

On 1 April 2004, the Commission issued Decision **[2004] IASC 201** agreeing to vary Determination **[2003] IASC 111**, but adding the following condition: ‘until 31 March 2005, the allocation of capacity hereunder is conditional upon Pacific Blue Australia remaining, except with the prior approval of the Commission, a wholly owned subsidiary in the Virgin Australia Holdings Limited Group’.



Photo provided by
Airnorth Regional

Appendix 3 — Summary of total capacity allocated and available for all routes (third/fourth freedom capacity) as at 30 June 2004*

ROUTE	PASSENGER CAPACITY ALLOCATED (PER WEEK)	PASSENGER CAPACITY AVAILABLE FOR ALLOCATION (PER WEEK)
Argentina	Nil	2,800 seats
Austria	Nil	Unlimited
Bahrain	Nil	12 frequencies**
Brunei Darussalam	Nil	Nine B747s or 18 B767s**
Burma	Nil	Two B747s
Canada	Nil	3,000 seats
Chile	Nil	2,000 seats
China	2,135 seats	6,215 seats**
Cook Islands	Nil	500 seats
Denmark	Nil	2,800 seats
Egypt	Nil	Three B747s
Fiji	1,260 seats	3,740 seats**
Finland	Nil	2,800 seats
France	Route 1 = 150 code share seats and three units, route 2 = two units, route 3 = 2.5 units (one unit = 400 seats)	Route 1 = 250 code share seats, route 2 = 2.5 units, route 3 — no capacity currently available
Germany	Seven frequencies	14 frequencies
Greece	Nil	2,100 seats
Hong Kong	9,121 seats and 33 frequencies	22 frequencies immediately and an additional 15 frequencies from IATA Northern Summer 2006 scheduling period**
India	2,100 seats	No capacity currently available
Indonesia	4,940 seats	5,860 seats**
Italy	Nil	Seven frequencies
Japan	63.2 units for the Northern Summer scheduling period and 65.6 for the Northern Winter scheduling period (one unit = one B767–200 equivalent)	15.8 units for the Northern Summer scheduling Period and 13.4 for the Northern Winter scheduling period
Jordan	Nil	Three frequencies
Korea	500 seats	4,500 seats
Kuwait	Nil	Two frequencies
Lebanon	Nil	Two B767s terminating in Lebanon, or three B767s transiting Lebanon
Luxembourg	Nil	Cargo capacity only
Macau	Nil	Three frequencies
Malaysia	1,150 seats	19,450 seats**
Malta	Nil	Three frequencies
Mauritius	Nil	One B747 or two B767s
Nauru	One frequency	Two frequencies
Netherlands	400 seats	2,800 seats
New Zealand	Unlimited	Unlimited

ROUTE	PASSENGER CAPACITY ALLOCATED (PER WEEK)	PASSENGER CAPACITY AVAILABLE FOR ALLOCATION (PER WEEK)
Niue	Nil	500 seats
Norway	Nil	2,800 seats
Pakistan	Nil	Three services
Papua New Guinea	1,000 seats	2,200 seats
Philippines	1,316 seats	Route 1 = 1,184 seats, regional development route = 400 seats
Poland	Nil	2,800 seats**
Qatar	Nil	Three frequencies
Russian Federation	Nil	Three frequencies
Samoa	Nil	1,000 seats
Singapore	Unlimited	Unlimited
Solomon Islands	Nil	850 seats
South Africa	Five frequencies	Nil
Sri Lanka	Nil	3,500 seats**
Sweden	Nil	2,800 seats
Switzerland	Seven third-country code share frequencies	2,800 seats and seven third- country code share frequencies**
Taiwan	Nil	3,600 seats
Thailand	Seven B747 and 21 third-country country code share frequencies	28 B747s and seven third-country code share frequencies
Tonga	Nil	600 seats
United Arab Emirates	Nil	46 frequencies, increasing to 50 from November 2004 and to 53 from March 2005**
United Kingdom	25 services	Three services
United States	Capacity on South Pacific route in accordance with air transport arrangements	South Pacific route = minimum of four frequencies, North Pacific route = minimum of three frequencies, Guam & Northern Mariana Islands route = four DC10s
Vanuatu	1,020 seats	380 seats
Vietnam	Nil	Seven frequencies**
Zimbabwe	Nil	1,600 seats

*The purpose of this table is to provide an overview only of the quantum of passenger capacity allocated and remaining available for allocation as at 30 June 2004. Separately specified cargo capacity entitlements are not included. The table does not purport to provide a detailed or comprehensive statement of rights allocated by the International Air Services Commission, nor of the capacity entitlements or related matters (such as code sharing) described in the Register of Available Capacity. It does not account for changes which may have occurred between that date and the date of publication of this annual report. Interested parties should contact the International Air Services Commission or DOTARS to obtain full information about any route. The Register of Available Capacity is available for public viewing on DOTARS' Internet site at www.dotars.gov.au/avnapt/downloads/register.pdf

**These routes have a Regional Package in place whereby services to points other than Brisbane, Melbourne, Sydney and Perth have unrestricted capacity entitlements. Refer to the Register of Available Capacity for details.

Appendix 4 — Freedom of information schedule

ITEM	INFORMATION
Access facilities	In many cases, application for information under the <i>Freedom of Information Act 1982</i> (FOI Act) might not be required because information or documents may be readily available through the Commission's public register process. Formal requests under the FOI Act must be made in writing to the Commission's Executive Director.
Arrangements for public involvement	Formal participation and consultation can be arranged by contacting the Executive Director of the Commission, whose contact details are listed at the commencement of this report. The Commission welcomes views and comments from members of the public and bodies outside the Commonwealth concerning its functions.
Commission powers	The Commission exercises decision-making powers under section 6(4) of the Act to perform its functions. It has the power to do everything necessary or convenient to be done for or in connection with performing those functions. The Commission has a range of specific powers that include convening public hearings and summoning witnesses.
Decision process	The general power to grant or refuse access to Commission documents is held by the Chairman. On 5 September 1994, the Chairman authorised the Executive Director to exercise the Chairman's powers and functions under the FOI Act.
Documents available for inspection	The Commission keeps a Register of Public Documents containing public versions of applications, submissions and comments for each case before the Commission. The register is available for public scrutiny. A Register of Confidential Documents that contains material from applications and submissions deemed to be confidential by the Commission or its Delegate is also maintained. The Commission applies those standards based on the FOI Act for the protection of documents relating to business affairs. Consistent with the transparency of its processes, the Commission encourages applicants and submitters to keep requests for confidential treatment of documents to a minimum. The Commission has published a series of guidelines that describe its procedures and processes in relation to allocating capacity. These guidelines are available on request or from the Commission's Internet home page. The Commission provides facilities for examining and copying publicly available documents at its offices. Documents may also be obtained by facsimile or by email. Operational files are maintained on all the Commission's activities and are stored at the offices of the Commission. These files are not open to public access.
Functions of the Commission	The functions of the Commission, as set out in section 6 of the Act, are to: <ul style="list-style-type: none"> (a) make determinations (b) conduct reviews of those determinations (c) provide advice to the Minister about any matter referred to the Commission by the Minister concerning international air operations.
How the Commission is organised	The organisation of the Commission is described in Part 2 of this report.
Location	The Commission's offices are located at 15 Mort Street, Canberra.

Appendix 5 — Commission procedures

The Commission has published procedures for making determinations allocating available capacity. The procedures are designed to be consistent with the requirements of the Act and with the principles of natural justice. They are intended to give applicants and other interested parties procedural fairness, ensure that the Commission's processes are as open as possible and provide guidance to anyone wishing to apply for, or make submissions about, an allocation of route capacity.

The Commission's procedures incorporate the following main steps:

- Create a Register of Public Documents for each route and make available for viewing by any interested person. The Commission requires a public version of all applications for, and submissions about, an allocation of capacity to be made available. A small amount of information received by the Commission is of a commercial-in-confidence or confidential nature. This material is held on the Commission's confidential register. Electronic distribution of all public documents is the Commission's normal practice.
- Decide the criteria under which applications are to be assessed and, where relevant, invite the applicant(s) to submit further information addressing public benefit criteria. Ensure that the applicant is reasonably capable of obtaining the approvals necessary

to operate and of using the capacity if so granted.

- Conduct a hearing if further information is needed to establish the nature and extent of a proposal's public benefit and, in the case of two or more competing applications, decide which application would be of the greatest benefit to the public.
- Publish draft determinations in the case of competing applications, or if it is proposed to reject all or part of an application, or where non-standard conditions are being proposed. This provides applicants and other interested parties with an opportunity to comment on the Commission's proposed allocation and any proposed terms and conditions prior to the issuing of a final determination. In other cases the Commission proceeds directly to a final determination.

The Commission regularly updates its procedures. They are available from the Commission's home page at <http://www.iasc.gov.au>, or upon request to the Commission.

Appendix 6 — Minister's policy statement

Policy Statement No 5 as amended by International Air Services Policy Statement No 5 (Amendment) dated 19 May 2004.

SECTION 11 POLICY STATEMENT

Background

The *Aviation Legislation Amendment Act 2002* (AVLA) inserted Part 3A into the *International Air Services Commission Act 1992*. It permits the International Air Services Commission to delegate some of the Commission's powers and functions regarding the allocation of capacity in the operation of international air services to an Australian Public Service employee in the Department of Transport and Regional Services. The *International Air Services Commission Amendment Regulations 2003* specify the circumstances in which the Commission may delegate those powers and functions.

The effect of these amendments is to streamline the procedures for considering applications from Australian carriers for a determination granting capacity.

References to the Commission in this instrument include the Delegate of the Commission unless expressly excluded.

1. CITATION

- 1.1 This instrument may be referred to as the International Air Services Policy Statement No 5. This policy statement replaces the policy statement made under section 11 of the International Air Services Commission Act 1992 by the instrument dated 23 April 1997 (as amended on 9 March 1999).

2. DEFINITIONS

- 2.1 In this policy statement, unless the contrary intention appears:

'Act' means the *International Air Services Commission Act 1992* (as amended)

'commercially sustainable level of capacity' means the minimum capacity necessary to permit the development of efficient commercially sustainable operations on a route.

'Commission' means the International Air Services Commission, unless otherwise specified.

'Delegate' means a person exercising the powers and functions of the Commission pursuant to section 27AB of the Act.

'new entrant' means, in relation to a route, an Australian carrier that has not previously been allocated a commercially sustainable level of capacity in relation to that route.

‘route’ relates to the full set of entitlements available to Australian carriers under a particular bilateral arrangement. All the combinations of origin, destination, intermediate and beyond points available to Australian carriers under the bilateral arrangement constitute a single route.

‘start-up phase’ means, in relation to any route, the period from 1 July 1992, or from such later date as a particular bilateral arrangement becomes subject to the Act in order that available capacity under that arrangement may be allocated by the Commission, until the date on which a determination has been made under the section 7 or 8 of the Act allocating a commercially sustainable level of capacity on the route to a new entrant.

3. GENERAL

- 3.1 This policy statement sets out the criteria to be applied by the Commission in performing its functions in relation to allocations of capacity to Australian carriers:
- in particular types of circumstances where the Commission is not obliged to apply the full range of criteria set out in paragraphs 4 and 5 below;
 - during the start up phase on a route;
 - when considering the renewal of determinations including interim determinations; and
 - when considering the review of determinations including variation and transfer applications.
- 3.2 The Commission should, in any adjudication of applications for capacity allocation, seek to maximise the benefits to the public to be gained from the operation of the capacity, assessed in accordance with the Act and against applicable criteria set out in this policy statement. When calling for applications, the Commission may set out matters it considers particularly important and the weighting that it is likely to give each of those matters.
- 3.3 In general, where capacity is subject to competing applications, the Government considers that own aircraft operations deliver greater benefits per unit of capacity used than code share operations involving arrangements for marketing seats on international carriers operated by another carrier or carriers.
- 3.4 In allocating capacity between competing applicants, the Commission may specify points to be served on the route when the criteria in paragraph 5 below are being applied. In other cases the Commission is to provide the carrier with flexibility to distribute capacity allowed to it among some or all of the combinations available on the route. However, in circumstances where, under a particular bilateral arrangement, limitations apply which prevent the same amount of capacity from being operated over the entire route, the Commission is to apply the provisions of paragraphs 4, 5 and 6 below as appropriate to the allocation of that limited capacity.
- 3.5 Subject to paragraphs 4, 5, 6 and 7 below, in allocating capacity on a route, the Commission will have regard to the objective of providing reasonable growth in entitlements to all Australian carriers operating on that route.
- 3.6 Where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise applications

for use of capacity to code share. However, if the Commission has serious concerns that a code share application (or other joint service proposal) may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission.

- 3.7 Where the Commission authorises a carrier to utilise allocated capacity to provide joint services with another carrier, the Commission will include a condition in all relevant determinations and decisions that the Australian carrier concerned should take all reasonable steps to ensure that passengers are informed, at the time of booking, that another carrier may operate the flight.

4. GENERAL CRITERIA FOR ASSESSING BENEFIT TO THE PUBLIC

- 4.1 Subject to paragraph 6 below, the general criteria against which the benefit to the public is to be assessed by the Commission in considering an allocation of capacity or the renewal or review of a determination allocating capacity to an Australian carrier are set out below:

- (a) Subject to (b), the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public.
- (b) It is not of benefit to the public for the Commission to allocate capacity to Australian carriers unless such carriers:
- (i) are reasonably capable of obtaining the necessary approvals to operate on the route; and
 - (ii) are reasonably capable of implementing their applications.

- 4.2 The Delegate of the Commission must refer any applications back to the members of the Commission where the Delegate has doubts that the applicant carrier satisfies the requirements of paragraph 4.1 (b).

5. ADDITIONAL CRITERIA FOR ASSESSING BENEFIT TO THE PUBLIC

- 5.1 The following additional criteria are applicable in assessing the benefit to the public in all circumstances other than is provided in relation to particular circumstances set out in paragraph 6 below.

Competition Benefits

- (a) In assessing the extent to which applications will contribute to the development of a competitive environment for the provision of international air services, the Commission should have regard to:
- the need for Australian carriers to be able to compete effectively with one another and the carriers of foreign countries;
 - the number of carriers on a particular route and the existing distribution of capacity between Australian carriers;
 - prospects for lower tariffs, increased choice and frequency of service and innovative product differentiation;

- the extent to which applicants are proposing to provide capacity on aircraft they will operate themselves;
- the provisions of any commercial agreements between an applicant and another carrier affecting services on the route but only to the extent of determining comparative benefits between competing applications;
- any determinations made by the Australian Competition and Consumer Commission or the Australian Competition Tribunal in relation to a carrier using Australian entitlements under a bilateral arrangement on all or part of the route; and
- any decisions or notifications made by the Australian Competition and Consumer Commission in relation to a carrier using Australian entitlements under a bilateral arrangement on all or part of the route.

Other Benefits

Tourism Benefits

- (b) In assessing the extent to which applications will promote tourism to and within Australia, the Commission should have regard to:
- the level of promotion, market development and investment proposed by each of the applicants; and
 - route service possibilities to and from points beyond the Australian gateway(s) or beyond the foreign gateway(s).

Consumer Benefits

- (c) In assessing the extent to which the applications will maximise benefits to Australian consumers, the Commission should have regard to:
- the degree of choice (including, for example, choice of airport(s), seat availability, range of product);
 - efficiencies achieved as reflected in lower tariffs and improved standards of service
 - the stimulation of innovation on the part of incumbent carriers; and
 - route service possibilities to and from points beyond the Australian gateway(s) or beyond the foreign gateway(s).

Trade Benefits

- (d) In assessing the extent to which applications will promote international trade, the Commission should have regard to:
- the availability of frequent, low cost, reliable freight movement for Australian exporters and importers.

Industry Structure

- (e) The Commission should assess the extent to which applications will impact positively on the Australian aviation industry.

Other Criteria

- (f) The Commission may also assess applications against such other criteria as it considers relevant.

- 5.2 The Commission is not obliged to apply all the criteria set out in paragraph 5.1, if it is satisfied that the criteria relevant to the application have been met. In applying all criteria, the Commission should take as the pre-eminent consideration, the competition benefits of each application.

6. CRITERIA APPLICABLE IN PARTICULAR CIRCUMSTANCES

Where capacity is not limited

- 6.1 In circumstances where capacity is not limited under a bilateral agreement, only the criteria in paragraph 4 are applicable.

Where there is only one applicant or sufficient available capacity

- 6.2 In circumstances where:
- (a) there is only one applicant (or where more than one application is made but all except one are withdrawn) for allocation of capacity on a route; or
 - (b) there is more than one applicant but the amount of available capacity is equal to or exceeds the total amount of capacity applied for:

only the criteria in paragraph 4 are applicable.

Variations of existing Determinations

- 6.3 Subject to paragraph 6.4, when the Commission is required to assess the benefit to the public, in circumstances where:
- (a) a carrier requests a variation of a determination to allow it flexibility in operating its capacity, including to use Australian capacity in a code share arrangement with a foreign carrier; and
 - (b) no submission is received about the application

only the criteria in paragraph 4 are applicable.

- 6.4 The Commission may apply the additional criteria set out in paragraph 5 where submissions are received about the application for variation, provided those criteria were considered when the original application for allocation of capacity was made, or in the circumstances set out in paragraph 3.6 above including where no submissions are received.
- 6.4 In circumstances where a carrier requests a variation of a determination to allow it flexibility in operating capacity allocated to it to include a condition of the type referred to in section 15(2)(ea) of the Act, the criteria set out in paragraph 4 above are applicable to any persons of the description used in that section.

7. ALLOCATION CRITERIA — START UP PHASE

7.1 Where capacity is limited under a bilateral arrangement, during the start up phase in relation to any route on which an Australian carrier is already operating scheduled international services, the pre-eminent consideration is to introduce competition on the route through the allocation to an initial new entrant of sufficient capacity to develop an efficient and commercially sustainable operation. The Commission should therefore allocate such capacity to an initial new entrant, providing it is satisfied that:

- (a) the level of capacity available and in prospect is sufficient to support efficient, commercially sustainable operations by both a new entrant and an incumbent Australian carrier;
- (b) the new entrant's tariff and service proposals would enhance competition on the route;
- (c) approval would not result in a decrease in inbound tourism to Australia or to Australian consumer benefits or trade; and
- (d) the new entrant is reasonably capable of obtaining the necessary approvals and commencing operations as proposed.

7.2 Where a bilateral arrangement provides for dedicated freight capacity in addition to other capacity (whether that other capacity is for passenger services alone or in combination with, or convertible to, freight services (however described), the start-up phase will be applied separately in relation to:

- (a) capacity involving the operation of passenger services (even if freight is also carried on those services); and
- (b) capacity for the operation of dedicated freight services, (irrespective of whether this would involve the use of dedicated freight capacity or the use of dedicated freight capacity in combination with other capacity under a bilateral arrangement):

and the application of the start up phase criteria in the case of either (a) or (b) above will not end the start up phase in the case of the other.

7.3 An Australian carrier seeking an allocation of capacity, or which may be permitted to use capacity allocated to an incumbent Australian carrier, will not be taken to be a new entrant if it is a subsidiary or a holding company of an incumbent Australian carrier operating on the route or if there is another substantial connection between the two carriers in relation to ownership and control.

7.4 Where there are applications for capacity on a route during the start up phase by two or more prospective new entrants, the criteria set out in paragraphs 4 and 5 are to be applied in selecting one of those applicants as the initial new entrant to be allocated the level of capacity referred to in paragraph 7.1.

7.5 Where the Commission invites applications for capacity on a route during the start up phase and none of the applications received are from new entrants, the criteria in paragraph 4 and, subject to paragraph 6.2, in paragraph 5 above are to be applied in considering an allocation.

7.6 In considering determinations during the start up phase, the Commission shall have particular regard to the possible use of interim determinations to facilitate the introduction of competition on the route without any unnecessary delay in the use of capacity.

8. RENEWAL OF DETERMINATIONS

8.1 Where capacity is limited under a bilateral arrangement, the criteria for assessing the benefit to the public for the purposes of the renewal of determinations, other than interim determinations, are set out below. The criteria reflect a presumption in favour of the carrier seeking renewal which may be rebutted only by application of the criteria in the circumstances described:

- (a) During the start up phase on the route:
 - the start up phase allocation criteria set out in paragraph 7 apply in relation to that part of the capacity which is reasonably necessary for a level of scheduled international services necessary to permit the development of efficient commercially sustainable operations; and
 - the criteria set out in paragraph 8.1(b) below apply to the balance of the capacity.
- (b) After the start up phase on the route:
 - whether the carrier seeking renewal has failed to service the route effectively; and
 - whether use of the capacity in whole or part by another Australian carrier that has applied for the capacity would better serve the public having regard to the criteria set out in paragraphs 4 and 5.

In relation to subparagraph (b), the Commission should issue a fresh determination allocating the capacity to the carrier seeking renewal unless both the criteria are met, in which case all or part of the capacity can be reallocated.

Renewal of Interim Determinations

8.2 Where capacity is limited under a bilateral arrangement, the criteria for assessing the benefit to the public for the purposes of renewal of interim determinations are:

- (a) during the start up phase on the route
 - the criteria set out in paragraph 7 as applicable.
- (b) after the start up phase on the route
 - the criteria set out in paragraphs 4 and 5.

9. THE 'USE IT OR LOSE IT' PRINCIPLE

9.1 For the purposes of specifying a period within which capacity allocated to an Australian carrier must be fully used, the Commission should specify as short a period as is reasonable having regard to the steps required to commence operations. Except in exceptional circumstances, the Commission should not specify a period longer than 3 years.

- 9.2 When seasonal variations in demand are a feature of a route or code share arrangements between airlines and cause temporary minor variations in capacity usage, or unforeseen conditions outside the control of operating international airlines cause temporary suspension of services, the Commission may take these circumstances into account when interpreting the term 'fully used' in section 15(2)(c) of the Act.
10. APPROVAL OF TRANSFER APPLICATIONS
- 10.1 For the purposes of considering transfer applications the Commission should take into account that approvals which encourage speculative activity would not be of benefit to the public. Except in exceptional circumstances, approvals should not be given that would have the effect of allowing a carrier that has never exercised an allocation or has only exercised it for less than a reasonable period, to transfer that allocation.
- 10.2 A period of 6 months would usually represent a reasonable period for the purposes of subparagraph 10.1.
11. PERIOD FOR WHICH A DETERMINATION IS IN FORCE
- 11.1 The period for which a determination is to be in force is:
- (a) on routes where either capacity or route rights are restricted:
 - (i) if the determination is an interim determination – 3 years; or
 - (ii) if the determination is not an interim determination – 5 yearsunless a carrier applies in writing requesting that a determination be for a lesser period than stipulated in (a) or (b). In these circumstances, the Commission may specify a lesser period in any determination relating to the application. In considering the renewal of a determination made in these circumstances, paragraph 8 will not apply.
 - (b) on routes where capacity and route rights are unrestricted:
 - (i) if the determination is an interim determination – 3 years; or
 - (ii) if the determination is not an interim determination – 10 years.

Appendix 7 — Service charter 2003–2005

Who we are and our role

The Commission is an independent statutory authority, established under the provisions of the *International Air Services Commission Act 1992* (the Act). The Commission is comprised of a Chairperson and two Members. Our role is to allocate capacity to existing and prospective Australian international airlines so that they may operate air services between Australia and other countries. We do this by making formal determinations. These are made following an assessment of applications from airlines for capacity available under Australia's air services arrangements with other nations. We make our assessments using public benefit criteria set out in a policy statement issued to us by the Minister for Transport and Regional Services.

The role of the Department of Transport and Regional Services (the Department)

The Act provides for us to delegate many of our powers and functions to an officer of the department, in certain circumstances. We will delegate the relevant powers and functions to our executive director, who is also a departmental officer. This will give you a single point of contact and should ensure that the administration of Commission and departmental decision making is harmonised. The delegate will adopt the standards set out in this charter, so you will receive the same level of service in all cases.

In practical terms, the Commission will determine the more complex cases, such as where there are competing applications for capacity, a carrier is new to a route, or there are serious competition concerns about a proposal. Our delegate will deal with straightforward applications.

The people and organisations with an interest in what we do

Existing and prospective airlines are the organisations mainly affected by Commission decisions. However, our decisions are relevant to many other people and organisations. These include:

- the travelling public;
- the tourism and air freight industries, including Australian exporters;
- the wider aviation industry, including airport owners, providers of services to airlines, and employee associations;
- the Minister for Transport and Regional Services; and
- Australian and State Government departments and agencies.

Our commitment to you

We aim to provide you with the highest standard of service possible. We endeavour to achieve this through fostering professional relationships, and by an accessible, fair and prompt decision making process. Where possible, we have measurable standards against which our service can be judged. Specifically:

In our dealings with you, we will

- treat you fairly, courteously and professionally;
- provide clear, accurate advice and answer your questions promptly;
- respond constructively to your feedback;
- include contact names and phone numbers in our correspondence; and
- answer phone calls by name and return any missed calls within 24 hours if you leave a message.

In our decision making processes, we will

- inform you directly within five working days of receiving an application for capacity;
- follow our published procedures for handling cases (available on our website or upon request);
- seek only information which is reasonably necessary for us to best carry out our functions, and explain the reasons for seeking any additional information;
- be transparent and fair, with a minimum of confidentiality consistent with the legitimate protection of commercial interests;
- make decisions about uncontested applications within four weeks of receipt and contested applications within 12 weeks, or inform you if issues arise which will extend the decision time;
- finalise the renewal of existing determinations as quickly as possible and, in the case of contested renewals, at least six months prior to the expiry date; and
- notify applicants within 24 hours of a decision being made, and other interested parties within three working days.

What we ask of you

To assist us to provide the best service possible, we ask you to provide timely, comprehensive and accurate information and to be honest and fair in your dealings with us.

Accessibility

We keep you informed quickly and as comprehensively as you wish about our activities. We also endeavour to make contacting us as easy as possible. Contact details conclude this charter.

We provide information about current cases directly to interested parties by email. There are two levels of information provided. The first is simple notification, which advises when applications have been received, and when Commission decisions are made. More detailed information is provided if you wish to receive copies of all relevant documents directly. This second service is provided for a small annual

fee. Documents are provided in pdf format. Contact us if you wish to be added to either notification list.

Our internet site at www.iasc.gov.au provides ready access to all aspects of the Commission's business. It includes direct links to the Act, the Minister's policy statement, Commission procedures, information about current cases, and decisions.

If you do not have access to email or our internet site, notifications and copies of documents can be provided to you by facsimile or post, or if you visit our office.

Monitoring and review

We will monitor our performance against the commitments we have made in this service charter. We encourage you to comment on our performance and to suggest ways to improve our service. If you are dissatisfied with any aspect of our service, it is important that you tell us so we can address your concerns. Comments should be provided to the Commission's executive director by mail, facsimile, email or telephone.

At the end of each year we will assess how we have performed against the standards we have set ourselves. We may invite your comments on our service performance, such as through a brief questionnaire. The results of the assessment will be set out in our annual report. If you wish to receive a copy of the report, let us know and we will post it to you. Alternatively, the report can be found on our internet site.

We will also review annually the service charter itself, to ensure that it is meeting your requirements. This may include arranging an independent review from time to time.

Contact details

Telephone:	(02) 6267 1100
Facsimile:	(02) 6267 1111
Email:	iasc@dotars.gov.au
Internet:	www.iasc.gov.au
Postal address:	GPO Box 630, Canberra ACT 2601
Premises:	1st Floor, ATSB Building, 15 Mort Street, Canberra

Appendix 8 — Commission office holders, 1992–2004

The following tables set out the names of the Chairmen and Commissioners, and Executive Directors, over the 12 years since the Commission was established.

CHAIRMEN	PERIOD	MEMBERS	PERIOD
Stuart Fowler	July 1992 to April 1993	Brian Johns	July 1992 to June 1997
James Bain	July 1993 to June 1998	Russell Miller	July 1992 to June 1998
Russell Miller	July 1998 to January 2000	Michael Lawriwsky	December 1997 –
Michael Lawriwsky and Stephen Lonergan (member presiding at alternate meetings)	January 2000 to August 2000	Stephen Lonergan	August 1998 –
Ross Jones	August 2000 to August 2003		
John Martin	November 2003 –		

EXECUTIVE DIRECTORS	PERIOD
Tony Slatyer	July 1992 to November 1992
Ian Rischbieth	December 1992 to July 1995
Anne Buttsworth (acting)	August 1995 to October 1995
Neil Ada (acting)	October 1995 to May 1996
Danny Scorpecci	May 1996 to October 1997
Chris Samuel	October 1997 to February 2001
Michael Bird	February 2001 –

Appendix 9 — Glossary of terms

Act	in this report, means the <i>International Air Services Commission Act 1992</i> as amended.
Air services arrangement	is a set of treaty and/or lower level understandings or arrangements between Australia and another country which permits the carriage by air of passengers or freight or both on agreed routes.
Allocation	a finding by the Commission, included in a determination, that an Australian carrier is permitted to use a specified amount of capacity.
Australian carrier	means a person who <ul style="list-style-type: none"> • conducts, or proposes to conduct, an international airline service to and from Australia; and • under the air services arrangements to which the capacity applies, may be permitted to carry passengers or freight, or both passengers and freight, under that arrangement as an airline designated, nominated or otherwise authorised by Australia.
Available capacity	means that an operational decision is not in force in relation to an amount of capacity available under air services arrangements, so an Australian carrier may seek an allocation of some or all of that capacity.
Benefit to the public	occurs if the Australian carrier to whom the capacity is allocated uses that capacity.
Capacity	is an amount of space available on an aircraft for the carriage of passengers and/or freight. It may be expressed within air services arrangements in various ways, such as in number of seats, units of capacity, or frequency of service, usually per week, in each direction on a route.
Code sharing	is a form of joint service between two carriers. It involves an arrangement under which one carrier sells capacity under its own name on flights operated by another airline.
Commission	means the International Air Services Commission, established by section 6 of the Act.
Commissioner	means a member of the Commission.
Contested application	involves two or more applicant carriers seeking an allocation of the same limited amount of capacity.

Decision	affects an existing determination, either by confirming, varying, suspending or revoking it.
Determination	allocates capacity to an Australian carrier, usually for a period of five years, but in some cases for three years (an interim determination), or for ten years (where capacity is not limited under the air services arrangements in question).
DOTARS	means the Department of Transport and Regional Services.
Frequency	refers to the number of flights that are permitted to be or are being operated, usually on a weekly basis.
Interim determination	is a determination that is in force for three years, rather than the five (or in some cases 10) years for a standard determination. It does not carry the rebuttable presumption in favour of an incumbent carrier that usually attaches to a standard determination.
Minister's policy statement	is a written instrument made by the Minister for Transport and Regional Services under subsection 11(1) of the Act. It sets out the way in which the Commission is to perform its functions under the Act.
Opposed application	a situation in which an interested party makes a submission arguing that an application from a carrier should not be granted by the Commission.
Register of available capacity	sets out the amount of capacity under each of Australia's air services arrangements available for allocation, after deducting allocations made by the Commission. DOTARS maintains the Register.
Renewal determination	a new determination that renews an allocation of capacity made under a determination that is approaching its expiry date. It may involve updated terms and conditions at the Commission's discretion.
Review	involves an examination of an existing determination, either at the request of a carrier which wishes to vary the determination, or on the Commission's initiative if it is concerned that a carrier has or will breach a condition of the determination. In the case of a carrier-initiated review, the Commission may either vary the determination as requested by the carrier or confirm the determination. For a Commission-initiated review, the Commission may decide to confirm, vary, suspend or revoke the determination.

Revocation	a decision by the Commission to revoke (cancel) a determination.
Route	is the combination of origin, destination, intermediate and beyond points (cities) which an Australian carrier may serve under an air services arrangement.
Slots	time-specific landing and take off rights granted to a carrier to operate into and out of a particular airport, usually by the airport owner/operator.
Use it or lose it	a principle requiring allocated capacity to be used, or else be returned for reallocation.
Variation	a decision amending a determination, including conditions attached to it.

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