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BEFORE THE
FEDERAL AVIATION ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION

OFFICE OF THE
CHIEF COUNSEL
JULIES DOCHTER
2000 JUN 30 P 12:23

Fees for FAA Services
for Certain Flights

Docket No. FAA-2000-7018 - 40

PRELIMINARY COMMENTS OF
QANTAS AIRWAYS LIMITED

Qantas Airways Limited is an Air Carrier that operates both domestically within Australia and also offers international services with the main focus being on the Asia-Pacific region with onward services to Europe. Additionally, Qantas currently operates services to three destinations in the US (Honolulu, Los Angeles and New York) and pays the appropriate fees for those flights that land in or depart from the US. The fees recently proposed by the FAA for air traffic control (ATC) services provided to airline flights through oceanic airspace controlled by the FAA will have a direct and significant financial effect upon Qantas because of the large number of flights that Qantas operates between points in Australia and Japan that traverse US oceanic airspace. The imposition of the proposed charge will impact the services operated by Qantas to Japan as they will incur additional enroute charges when passing through the Oakland Flight Information Region (FIR). The total number of flights operated by Qantas to Japan (approximately 500 per annum) will result in an increase in Qantas costs to Japan of approximately US\$250,000 per annum. Of course, this expense will need to be passed on to our passenger fares and the resultant change to operations will depend on the prevailing elasticity of demand for that route.

The following paper provides comments from Qantas Airways with respect to the Interim Final Rule (IFR) requiring aircraft operators to pay fees for air traffic services which operate through US airspace but do not land or take off in the United States. Qantas further reserves the right to complete and make further comments by filing within the required date.

While Qantas is grateful for this opportunity to express its preliminary views on the new rule imposing fees for FAA ATC services for flights that do not take off or land in the United States or in US territory, Qantas concurs in the views expressed by other foreign airlines that it is wholly improper for the United States FAA to unilaterally adopt this rule without first consulting foreign airlines and their governments or, at a minimum, affording foreign airlines an opportunity to submit their views and questions prior to finalization of the rule. If the FAA had done so, many of the questions and uncertainties that now characterize the new rule could have been avoided, just as the FAA could have avoided the problems associated with the IFR issued in 1997 if it had engaged in prior consultations at that time.

Qantas does not dispute the right of the US Government to impose overflight charges for the use of the facilities and services that are provided. The charges imposed, however, must be directly related to the cost of the ATC services provided, be transparent, and be fair and reasonable. The fees adopted in the IFR issued in early June of this year do appear to reflect costs incurred by the FAA to a degree that was not present with respect to the 1997 IFR. Nonetheless, even under the point of view that is most favorable to the FAA, it is simply not possible to tell from the new IFR and the accompanying documentation whether the FAA has properly complied with the Congressional requirement that fees for overflight air traffic control services be "directly related to the ... costs of providing the service rendered." The documentation provided has many ambiguities and omits significant items of information. The rulemaking process is inherently flawed for that reason. Furthermore, Qantas believes that the new fees in fact do not satisfy the standard and do not correctly reflect the cost of providing ATC services to overflights.

Before Qantas outlines our concerns with the current proposal, it is appropriate to remark that the FAA's proposal has made significant steps towards the alignment of costs with the proposed fees. In particular, the recognition of costs being associated with aircraft activity on other than on a weight-based formula (the so-called Ramsey Pricing model) is laudable. We also agree with the inclusion of General Aviation (GA) in the analysis as recognition of the positive impact that GA has on the FAA's costs. Whilst this current proposal may not see a large proportion of the FAA's costs being passed on to GA, the recognition that the major cost driver is an aircraft irrespective of type is endorsed by Qantas.

Those comments notwithstanding, in its attempt to establish fees that correspond to FAA costs, the FAA has incorporated a number of assumptions into its fee computation without providing any reasons why the FAA believes the assumptions are valid or why the FAA has made the assumptions in preference to relying on data from its new cost accounting system. For example, as other carriers have pointed out, one of the main assumptions underlying the FAA's fee calculations is that the ATC services provided to enroute and oceanic overflights, respectively, do not differ from ATC services provided to other enroute or oceanic flights. For example, the FAA states as follows on page 10 of its "Overflight Fee Development Report" that it has filed in this docket (Docket FAA-2000-7018):

Because the level of ATC services are assumed identical for all aircraft operations within a particular environment (ie, enroute or oceanic), it is reasonable to assume that the costs of providing ATC services to overflights are proportional to total ATC costs within each environment.

This assumption is repeated at various points in the FAA Report, but the FAA does not explain why it believes it can assume that the level of ATC services is "identical for all aircraft operations within a particular environment." Indeed, the fact is that enroute and oceanic flights that are not overflights - that is, those that take off and land in the United States - require more ATC services to transition those flights to and from the airport terminal environment than do overflights. These flights vary more in altitude than do overflights; they fly more time at lower altitudes, especially as they move in to and out of terminal airspace, and these lower altitudes are more congested, requiring more controller attention.

The discrepancy between flights that require transition services and those that do not is especially acute in the case of oceanic airspace. In the case of a Qantas flight from Sydney to Japan, the flight track through the Oakland Flight Information Region (FIR) is 1271 nautical miles. While transiting this airspace, which takes approximately two hours and 40 minutes, the pilot reports his position eight times as procedural aircraft separation applies. For this service, Qantas will be charged US\$20.16 per 100 nautical miles, or approximately US\$256 per flight. Even though the new enroute and oceanic overflight fees are undoubtedly a better estimation of the costs of ATC services for overflights than the 1997 fees, the new charges still do not reflect the costs of providing these services to the degree that is both desirable and reasonably possible, especially in comparison to the higher cost of providing ATC services to oceanic flights that take off and land in the United States.

In addition, Qantas believes that the "capital investment expense" that the FAA has included in its calculation of the total costs for enroute and oceanic ATC services is far higher than it should be. First, it is impossible to tell from the information provided the degree to which the costs classified as "capital investment expense" are dedicated to ATC services. Secondly, to the extent they may indeed support ATC services, Qantas cannot tell whether these costs classified as capital expenses are being expensed or are being depreciated. Lastly, it appears that the FAA has included substantial research and development costs within "capital investment expense." Qantas does not know the details of these "R & D" expenses, but the point that is germane to these discussions is that many FAA "R & D" projects are not "directly related" to providing ATC services.

However, despite these comments, the implementation of the oceanic and enroute charges by the FAA is not in accordance with normal international practice. In Australia, for example, consultation on proposed charges is conducted in two parts. The first is a capital expenditure meeting where the industry is invited to comment and endorse the capital equipment expenditure of the air traffic service provider. This ensures that the industry only receives and subsequently pays for the level of service that is required. The second part of the consultation is a financial planning meeting where the ATS provider presents its three year financial plan and the proposed level of charging for each of the years. The level of consultation provided by the Australian ATS provider enables analysis of each divisional cost centre, the cost allocation methodology used and isolates areas where cost improvement is required. In line with the user-pays principle, Qantas looks to validate the costs of the service versus the service level and the value provided before agreeing to a fee level. After the industry consultation has occurred and the charging rate has been agreed by all parties, the Australian and international practice is that the revised fee will become effective within two or three months. This allows for airline budget amendments and a review of ticket tariff structures.

In the case of the current proposal by the FAA, the IFR covers the services provided with the current staffing levels and the capital equipment that the FAA has traditionally provided without undertaking discussions with the industry on what is actually required. The FAA has not held discussions with the industry on the capital equipment needed to provide an agreed level of service, nor the number of operators necessary to support the required level of service. Nor has there been any development of assessment criteria to measure the achievement of the required standards of service. Indeed, there has been no discussion of anything other than full recovery of the costs of providing the current level

of service – normal commercial practice would envisage the inclusion of measures to encourage the FAA to become more efficient in the delivery of the required level of service

The proposed oceanic charge does not differentiate between the Atlantic and Pacific Oceans, yet intuitively there would seem to be differing operational conditions in these two areas. Thus it would seem that the current proposal, by failing to establish different charges in each of these areas, has failed to conform to the requirement to ensure that fees reflect the cost of providing the services thereto applicable. However, without full transparency of the various Pacific and Atlantic costs, it is not possible to determine whether the proposed fees do accurately reflect the costs of providing those services. Therefore, Qantas questions the allocation of the costs included in the cost base for oceanic overflights, as the proposed charge may not efficiently reflect the level of service that is provided.

Search and Rescue costs (shown as “emergency services” in the Docket) should not be included in the cost base unless, as per Appendix 2 of ICAO Doc 9082/5 the services that are identified are associated with “any permanent civil establishment of equipment and personnel maintained for the purposes of providing such services”. Note should also be taken of paragraph 30 (ii) of Doc 9082/4 where the council recommends that states should “refrain from imposing charges that discriminate against international civil aviation in relation to other modes of international transport”. Thus, to conform with International practice under ICAO, S&R costs should not be included in the cost base.

Undoubtedly many of the questions that Qantas and other carriers have regarding the calculation of the new fees could have been resolved, and any deficiencies in the fee calculation remediated, if the FAA had consulted with affected carriers and their governments before the adoption of the new fees in accordance with standard regulatory practice both in the United States, in Australia, and in most foreign nations. Qantas recognizes that the FAA has made significant improvements to its cost accounting systems since the adoption of the former IFR in 1997. Qantas therefore urges the FAA to continue this progress and to work with users to immediately adjust the new fees to correctly reflect the actual cost of providing the services in question.

The limited amount of time available for these comments does not allow us to detail all of the areas in which Qantas believes the IFR has made either erroneous, or at best highly questionable, assumptions and calculations to establish the new enroute and oceanic fee levels. Qantas will present these further objections more formally by the deadline for comments, either individually or collectively with other affected carriers.

Some additional areas in which Qantas would like further information and clarification are the following:

- Are the costs associated with military and or other state functions excluded from the oceanic overflight cost base? If these carriers are not required to pay for the provision of their required services, the costs of providing such services should not be borne by other carriers.
- Can the FAA explain how the incremental cost associated with procedural airspace control was derived?

- Direct maintenance costs were allocated based on the number of controllers. Oceanic overflight is mainly carried out using procedural separation which requires a lower capital outlay than domestic overflight where radar is used. Therefore, does the FAA believe that the proposed allocation is appropriate?
- Will the FAA be able to provide detail into the build-up of direct oceanic facilities and equipment costs which were developed as part of the cost allocation study?
- Can the FAA explain why the set-up development costs for billing are only amortized over two years? Normal commercial practice would indicate that a repayment period of some five years is more appropriate than two.
- Based on the current and proposed capital expenditure programmes and efficiency gains that will occur, does the FAA envisage that the new overflight fees will be reduced at some time in the future?
- What traffic growth forecast figures were used in setting the charging levels?
- What programme does the FAA envisage will be instituted to drive down costs, rather than to simply institute a cost-plus billing system?
- In terms of the specifics of the cost analysis summary provided under Docket No FAA-00-7018:
 - There needs to be a precise definition of what constitutes a 'flight' and how details of the flights and the miles were determined.
 - There is no specific statement of the number of flights and the mileage figures for the flights that do not take-off or land in the US.
 - There is no statement of the differences in flight numbers and the costs between the Pacific and the Atlantic Centers.
 - There needs to be a further distribution of the controllers' time applied to overflights and transitions at both Enroute and Oceanic Centers.

In closing, Qantas seeks an opportunity to consult with the FAA on its cost allocation methodology and the appropriate level of fees for overflight ATC services. In a report commissioned by some of the affected international carriers, KPMG has indicated a number of areas of concern with the IFR. In the time available, the detailed queries raised in the KPMG report have not been included in this presentation, but further reference will be made to this report in the final response to the IFR. In line with international practice we ask, as we did in 1997, that the FAA defer implementation of overflight charges until the FAA has completed appropriate consultations with the international airline industry.