

RENEWAL DETERMINATION

DETERMINATION NO: IASC/DET/9909
RENEWAL OF: DETERMINATION IASC/DET/9402
THE ROUTE: CHINA
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901)

1. The application for renewal

1.1. On 29 November 1994, the Commission issued Determination IASC/DET/9402 (the determination), allocating the equivalent of 2.165 units (one unit is equivalent to 200 seats) per week to Qantas Airways Limited ACN 009 661 901 (Qantas) on the China route. The determination expires on 28 November 1999.

1.2. On 23 February 1999, Qantas wrote to the Commission seeking a renewal of the determination. On 26 February 1999, the Commission published a notice inviting submissions from any interested person about the renewal of the determination, and other applications for an allocation of all or part of the capacity subject to renewal. The closing date for submissions and other applications was 12 March 1999. No submissions or other applications were received.

1.3. Qantas has a total allocation of 4.56 units for services between Sydney/Melbourne and Shanghai/Beijing. It is currently utilising 3.435 units. Qantas is seeking to retain the unutilised amount of capacity in the medium term to retain some flexibility for operations on the route. Qantas submits that by cutting back on services to Beijing and entering into a code share arrangement with China Eastern, it can boost its returns on the China route and consider growth in services in the medium term. In its submission Qantas states that if its expectations on the route are not met within a reasonable time frame, or if another carrier seeks to take up any of its unused China route capacity, it would expect to be asked to reconsider its position on retaining the unutilised capacity.

2. Commission's consideration of the renewal of the determination

2.1. Under section 11 of the *International Air Services Commission Act 1992* (the Act), the Minister may make Policy Statements setting out matters relevant to the Commission's performance of its functions. Under the Policy Statement (No. 3), issued by the Minister on 23 April 1997, there is a rebuttable presumption in favour of the carrier seeking the renewal.

2.2. The Commission notes that Australia was granted Approved Destination Status for Chinese citizens on 22 April 1999. Australia is the first western destination to achieve this status and this, combined with the opening of an Australian Tourist Commission office in Shanghai, should lead to a boost in visitor traffic on the route. As a result Ansett International

and Qantas, both of whom hold allocations of capacity on the China route, are reviewing their plans for the route.

2.3. The Commission also notes that:

- although Qantas has not been fully utilising the relevant capacity, Qantas has advised the Commission that it has reasonable prospects of doing so in the medium term;
- there are no other applicants seeking capacity on the route; and
- there is no other evidence that Qantas has failed to service the route effectively.

The Commission therefore concludes that the renewal of Determination IASC/DET/9402 would be of benefit to the public.

2.4. The wording of the fresh determination below reflects the belief of the Commission that determinations which renew original determinations should contain updated terms and conditions consistent with the Commission's current practice. Under the Act, the Commission may make changes to the terms and conditions included in the original determination where warranted by changes in circumstances since the original determination was made.

2.5. As far as the 1.125 unutilised units of capacity is concerned, the Commission will allow Qantas some flexibility before requiring that capacity to be returned. The Commission will keep this aspect under review.

3. Determination for renewal of Determination IASC/DET/9402 allocating capacity on the China route to Qantas (IASC/DET/9909)

3.1. The Commission finds a renewal of the Determination IASC/DET/9402 allocating the equivalent of 2.165 units per week of capacity to Qantas on the China route would be of benefit to the public.

3.2. The Commission makes a fresh determination in favour of Qantas, allocating the equivalent of 2.165 units per week in each direction on the China route.

3.3. The determination is for 5 years from 29 November 1999 and is subject to the following conditions:

- Qantas is required to fully utilise the allocated capacity from 29 November 1999;
- only Qantas is permitted to utilise the capacity;
- the capacity may be used by Qantas to provide services jointly with China Eastern in accordance with:
 - the code share agreement dated 6 May 1999, subject to the following conditions:

- : the maximum number of seats exchanged with China Eastern over all Qantas services on the China route shall not exceed 180 per week each way; and
 - : any other variations to the number of code share seats or services require the prior approval of the Commission;
 - : any new joint service agreement between Qantas and China Eastern for operations on the China route, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- to the extent that the capacity is used to provide services jointly with China Eastern:
 - Qantas must price and sell its services on the route independently;
 - Qantas must not share or pool revenues; and
 - Qantas must take all reasonable steps to ensure that passengers are informed at the time of seat reservation, of the carrier actually operating the flight.
- changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia - China Air Services Agreement being withdrawn; or
 - has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of Qantas or be in a position to exercise effective control of Qantas, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of Qantas are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia - China Air Services Agreement.

Dated: 17 May 1999

Russell Miller
Chairman

Michael Lawriwsky
Member

Stephen Lonergan
Member