

RENEWAL DETERMINATION

DETERMINATION NO: IASC/DET/9910
RENEWAL OF: DETERMINATION IASC/DET/9404
THE ROUTE: JAPAN
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901)

1. The application for renewal

1.1. On 6 December 1994, the Commission issued Determination IASC/DET/9404 (the determination), allocating the equivalent of one B767-200 unit per week and one frequency to Kansai to Qantas Airways Limited ACN 009 661 901 (Qantas). The determination expires on 5 December 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.

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 has previously approved the code share agreement Qantas has with Japan Airlines which covers all the capacity Qantas operates on the Kansai route. The code share agreement expires on 31 March 2000 and the Commission has included a condition in IASC/DET/9804 approving code sharing until that date. The Commission proposes to include the same condition in this renewal.

2.3. The Commission notes that:

- Qantas has been fully utilising the relevant capacity;
- there are no other applicants seeking capacity on the route; and
- there is no evidence that Qantas has failed to service the route effectively.

The Commission therefore concludes that the renewal of Determination IASC/DET/9404 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.

3. Determination for renewal of Determination IASC/DET/9404 allocating capacity on the Japan route to Qantas (IASC/DET/9910)

3.1. The Commission finds a renewal of the Determination IASC/DET/9404 allocating the equivalent of 1.0 B767-200 capacity unit per week and one frequency to Kansai to Qantas would be of benefit to the public.

3.2. The Commission makes a fresh determination in favour of Qantas, allocating the equivalent of one B767-200 units per week and one frequency between Australia and Kansai under the Australia - Japan Air Services Agreement.

3.3. The determination is for 5 years from 6 December 1999 and is subject to the following conditions:

- Qantas is required to fully utilise the allocated capacity from 6 December 1999;
- only Qantas is permitted to utilise the capacity;
- Qantas may provide services jointly with Japan Airlines until 31 March 2000 in accordance with the code share agreement of 20 March 1998 and amendments to that agreement as approved by the Commission by IASC/DEC/9816, subject to the following conditions:
 - 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 - Japan 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 - Japan Air Services Agreement.

Dated: 17 May 1999

Russell Miller
Chairman

Michael Lawriwsky
Member

Stephen Lonergan
Member