

RENEWAL DETERMINATION

DETERMINATION NO: [2000] IASC 105
RENEWAL OF: DETERMINATION IASC/DET/9725
THE ROUTE: NETHERLANDS
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901)

1 The application for renewal

1.1 On 30 June 1997, the Commission issued interim Determination IASC/DET/9725 (the determination) allocating three frequencies per week in each direction to Qantas Airways Limited (Qantas) on the Netherlands route. The determination was varied by IASC/DEC/9804 to 400 seats per week operated under a third country airline code share, following changes to the Australia- Netherlands ASA to express passenger capacity entitlements in seats per week. Qantas utilises the capacity under a code share agreement with British Airways, with British Airways being the operating carrier on the London to Amsterdam sector.

1.2 The determination expires on 29 June 2000.

1.3 Qantas has applied to the Commission seeking a renewal of the determination for a period of 5 years. The Commission subsequently 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. No submissions or other applications were received.

2 Commission's consideration

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:

- 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.

2.3 The Commission therefore concludes that the renewal of Determination IASC/DET/9725 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/9725 allocating capacity on the Netherlands route to Qantas ([2000] IASC 105)

3.1 The Commission finds a renewal of the Determination IASC/DET/9725 allocating capacity to Qantas on the Netherlands route would be of benefit to the public.

3.2 The Commission makes a fresh determination in favour of Qantas, allocating 400 seats per week in each direction on the Netherlands route.

3.3 The determination is for 5 years from 30 June 2000 and is subject to the following conditions:

- that Qantas is required to fully utilise the allocated capacity from 30 June 2000;
- only Qantas is permitted to utilise the capacity;
- the capacity may be used by Qantas to provide services jointly with British Airways in accordance with the code share agreement dated 5 October 1997 between Qantas and British Airways, in accordance with its terms, subject to the following conditions:
 - Qantas may only price and market its services, or share or pool revenue, on the route jointly with British Airways as long as such practices are authorised under the *Trade Practices Act 1974* or otherwise authorised by the Australian Competition and Consumer Commission or the Australian Competition Tribunal, in the event of review by that Tribunal;
 - Qantas must take all reasonable steps to ensure that all passengers are informed, at the time of booking, 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-Netherlands 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 results in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia-Netherlands Air Services Agreement.

Dated: 21 February 2000

Michael Lawriwsky Stephen Lonergan
Member Member