



# INTERNATIONAL AIR SERVICES COMMISSION

## RENEWAL DETERMINATION

**DETERMINATION NO:** [2001] IASC 118  
**RENEWAL OF:** DETERMINATION IASC/DET/9705  
**THE ROUTE:** GERMANY  
**THE APPLICANT:** QANTAS AIRWAYS LIMITED  
(ACN 009 661 901)  
**PUBLIC REGISTER FILE:** IASC/APP/200124

### 1 The application for renewal

1.1 On 15 May 1995, the Commission issued Determination IASC/DET/9705 allocating four B747 services per week in each direction to Qantas Airways Limited (Qantas) on the Germany route. The determination was subsequently varied by Decision IASC/DEC/9823 (amended by Resolution [2000] IASC R08) to permit Qantas to use the capacity in joint services with British Airways.

1.2 The determination expires on 30 June 2002.

1.3 Qantas applied to the Commission seeking a renewal of the determination. 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 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/9705 would be of benefit to the public.

2.4 The wording of the fresh determination below reflects the view of the Commission that determinations which renew original determinations should contain updated terms and conditions consistent with the Commission's current practice. Under the *International Air Services Commission Act 1992*, 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/9705 allocating capacity on the Germany route to Qantas ([2001] IASC 118)**

3.1 The Commission finds a renewal of Determination IASC/DET/9705 allocating capacity to Qantas on the Germany route would be of benefit to the public.

3.2 The Commission makes a fresh determination in favour of Qantas, allocating four frequencies per week in each direction on the Germany route.

3.3 The determination is for five years from 1 July 2002 and is subject to the following conditions:

- Qantas is required to fully utilise the allocated capacity;
- 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; or
  - any new code share agreement, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the arrangements with British Airways, Qantas may only price and market its services, or share or pool revenues/profits 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 Tribunal, in the event of review by that Tribunal; and
- to the extent that the capacity is used to provide joint services on the route, Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- 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 - Germany air services arrangements 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 - Germany air services arrangements.

Dated: 13 December 2001

Ross Jones  
Chairman

Michael Lawriwsky  
Member

Stephen Lonergan  
Member