



# INTERNATIONAL AIR SERVICES COMMISSION

## RENEWAL DETERMINATION

**DETERMINATION NO:** [2001] IASC 125  
**RENEWAL OF:** DETERMINATION IASC/DET/9716  
**THE ROUTE:** UNITED STATES  
**THE APPLICANT:** QANTAS AIRWAYS LIMITED  
(ACN 009 661 901) (QANTAS)  
**PUBLIC REGISTER FILE:** IASC/APP/200124

### 1 The application for renewal

1.1 On 27 March 1997, the Commission issued Determination IASC/DET/9716 (the determination) renewing the allocation of capacity to Qantas on the United States route. The determination was varied by decisions IASC/DEC/9810 and [2000] IASC 216 to permit joint operations with United Parcel Service and Air Tahiti Nui respectively. The determination expires on 30 June 2002.

1.2 Qantas has applied to the Commission for a renewal of the determination. The Commission published a notice on 31 August 2001 inviting submissions about the application, and other applications for an allocation of the capacity subject to renewal. No submissions or other applications were received.

1.3 All material supplied by the applicant is filed on the Register of Public Documents.

### 2 Provisions of relevant air services arrangements

2.1 The Air Transport Agreement of 1946 and the 1989 Capacity Agreement between the United States of America and Australia, as amended, provide for the operation of international air services between Australia and the United States on three routes, a South Pacific route, a North Pacific route, and a Guam and the Commonwealth of the Northern Mariana Islands route. The Agreements provide for the multiple designation of Australian carriers with the one restriction that no more than two designated airlines of either country can operate on the North Pacific route at any one time.

2.2 The Agreements provide that designated airlines may increase their capacity on each of the United States routes, within ceilings, on a year by year basis when nominated average load factors are met, or in order to reduce load factors to a nominated level.

2.3 The Agreements make no restrictions on all cargo flights between Australia and the United States.

### **3 Commission's consideration**

3.1 Under the Minister's Policy Statement (No. 3), of 23 April 1997, as amended on 9 March 1999, there is a rebuttable presumption in favour of the carrier seeking the renewal.

3.2 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.

3.3 In these circumstances, the Commission concludes that the renewal of Determination IASC/DET/9716 would be of benefit to the public.

3.4 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 and current air services arrangements. 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.

### **4 Determination for renewal of Determination IASC/DET/9716 allocating capacity on the United States (South Pacific) route to Qantas ([2001] IASC 125)**

4.1 The Commission makes a fresh determination in favour of Qantas, providing that Qantas may operate capacity on the South Pacific route in each direction between Australia and the United States consistent with the terms of the Australia - United States air transport arrangements.

4.2 The determination is for 5 years from 1 July 2002.

4.3 The determination is subject to the following conditions:

- Qantas is required to utilise the 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;
- the capacity may be used by Qantas to provide cargo services jointly with American Airlines in accordance with the cargo blocked space agreement between Qantas and American Airlines dated 13 March 1997 as extended, or with prior approval by the Commission, as amended from time to time;
- the capacity may be used by Qantas to provide passenger services jointly with American Airlines in accordance with:
  - the code share agreement dated 15 September 1995;
  - or any subsequent code share agreement between Qantas and American Airlines for operations on the Australia-United States route with the prior approval of the Commission; and
- under any passenger code share agreement with American Airlines:
  - Qantas must price and sell its services on the route independently of American Airlines;
  - Qantas must not share or pool revenues on the route with American Airlines;
- the capacity may be used by Qantas to provide cargo services jointly with Federal Express in accordance with:
  - the code share agreement dated 6 August 1998;
  - or any subsequent code share agreement between Qantas and Federal Express for operations on the Australia-United States route with the prior approval of the Commission; and
- under any code share agreement with Federal Express:
  - Qantas must price and sell its services on the route independently of Federal Express;
  - Qantas must not share or pool revenues on the route with Federal Express;
- the capacity may be used by Qantas to provide cargo services jointly with Air Pacific in accordance with:
  - the Capacity Purchase/Sale Agreements agreement dated 14 October 1996 between Qantas and Air Pacific as extended from time to time in accordance with their terms, or as varied except in

relation to Article 1 - Capacity Sale (and associated attachments) and Article 3 - Schedule of Flights (and associated attachments); or

- variations to the Capacity Purchase/Sale Agreements which relate to any of the excepted matters referred to above, subject to the prior approval of the Commission; or
- any new joint service arrangements between Qantas and Air Pacific for operations on the Australia - United States route whether or not it replaces one or both of the existing Agreements, with the prior approval of the Commission;
- under any code share agreement with Air Pacific:
  - Qantas must price and sell its services on the route independently of Air Pacific;
  - Qantas must not pool revenues on the route with Air Pacific;
- the capacity may be used by Qantas to provide cargo services jointly with United Parcel Service in accordance with:
  - the code share agreement dated 14 April 1998;
  - or any subsequent code share agreement between Qantas and United Parcel Service for operations on the Australia-United States route with the prior approval of the Commission; and
- under any code share agreement with United Parcel Service:
  - Qantas must price and sell its services on the route independently of United Parcel Service;
  - Qantas must not share or pool revenues on the route with United Parcel Service;
- the capacity may be used by Qantas to provide services jointly with Air Tahiti Nui in accordance with:
  - the code share agreement dated 12 May 2000;
  - or any subsequent code share agreement between Qantas and Air Tahiti Nui for operations on the Australia-United States route with the prior approval of the Commission; and
- under any code share agreement with Air Tahiti Nui:
  - Qantas must price and sell its services on the route independently of Air Tahiti Nui;
  - Qantas must not share or pool revenues on the route with Air Tahiti Nui;

- to the extent that the capacity is used to provide joint 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 - United States air transport 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 - United States air transport arrangements.

Dated: 13 December 2001

Ross Jones  
Chairman

Michael Lawriwsky  
Member

Stephen Lonergan  
Member