



## Australian Government

### International Air Services Commission

#### DETERMINATION

**Determination:** [2004] IASC 101  
**The Route:** China  
**The Applicant:** Qantas Airways Limited (Qantas)  
(ACN 009 661 901)  
**Public Register:** IASC/APP/200402

#### 1 The application

1.1 On 17 February 2004, Qantas applied for an allocation of 2,135 seats per week on the China route under the Australia – People’s Republic of China (China) air services arrangements. Qantas proposes to introduce three services per week between Sydney and Shanghai from the Northern Winter 2004 scheduling period. The flights would be carried out using either B767-300 or A330 aircraft. Qantas sought approval for these three weekly services (involving 687 seats weekly) to be operated by no later than the end of November 2004. A further four services per week are planned to be fully phased in by November 2005 and Qantas sought approval to fully utilise the balance of the capacity sought by no later than that time.

1.2 Although there are currently no plans for the allocation to be used by Australian Airlines, Qantas requested flexibility in the determination to allow the capacity to be used by it or a wholly-owned subsidiary.

1.3 On 23 February 2003, the Commission published a notice inviting applications from interested parties for some or all of the capacity sought by Qantas. No applications were received.

1.4 All material supplied by the applicant is filed on the Commission’s Register of Public Documents.

#### 2 Provisions of relevant air services arrangements

2.1 Operation of the capacity involved in each application is consistent with the provisions of the Australia - China air services arrangements. According to the Register of Available Capacity there are 8,350 seats per week available for immediate allocation on the China route for services to and from Sydney, Melbourne, Brisbane and Perth.

### **3 Delegate's consideration**

3.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (the Act) and regulation 3A of the *International Air Services Commission Amendment Regulations 2003 (No.1)*, the delegate of the Commission considers the Qantas application.

3.2 Under paragraph 6.2 of the Minister's policy statement, the Commission is required only to apply the criteria in paragraph 4 of the policy statement. Under paragraph 4, the use of entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. For an established international carrier such as Qantas, this means that there is public benefit arising from the use of the entitlements.

3.3 The delegate notes that Qantas proposes not exercising a substantial proportion of the capacity until November 2005. The Commission would generally not be expected to allow capacity to be unused for such an extended period if this might mean limiting opportunities for potential new entrants. However, in this case, ample capacity remains available for allocation so no concern arises from allowing Qantas to hold the capacity for the duration proposed. The delegate concludes that an allocation to Qantas of 2,135 seats per week in each direction on the China route would be of benefit to the public.

### **4 Determination allocating capacity on the China route to Qantas ([2004] IASC 101)**

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating 2,135 seats of capacity per week in each direction between Australia and China, from the seats of capacity available to be operated by the designated airlines of Australia to and from Sydney, Melbourne, Brisbane and Perth.

4.2 The determination is for five years from the date of this determination.

4.3 The determination is subject to the following conditions:

- Qantas, or another Australian carrier which is a wholly owned subsidiary of Qantas, is required to utilise a minimum of 687 seats of the capacity by no later than 30 November 2004, or from such other date approved by the Commission;
- Qantas, or another Australian carrier which is a wholly owned subsidiary of Qantas, is required to fully utilise the capacity by no later than 31 October 2005, or from such other date approved by the Commission;
- only Qantas, or another Australian carrier which is a wholly owned subsidiary of Qantas, is permitted to utilise the capacity;

- neither Qantas nor another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- 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 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 – China air services arrangements.

Dated: 2 March 2004

Michael Bird  
Executive Director  
Delegate of the IASC Commissioners