



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2006] IASC 108
Renewal of: [2001] IASC 119
The Route: Hong Kong
The Applicant: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/200616

1 The application for renewal

1.1 On 13 December 2001, the Commission issued Determination [2001] IASC 119, allocating 4,433 seats and 14 frequencies per week for passenger services and one frequency per week for cargo services in each direction to Qantas on the Hong Kong route.

1.2 The determination was subsequently varied by Decisions [2002] IASC 203, [2004] IASC 206 and [2006] IASC 211, with the effect that the amount of capacity allocated is now 15 frequencies per week of capacity with any aircraft type in each direction between any points in Australia and Hong Kong. The variations have also permitted the provision of joint services with Finnair and permitted wholly owned subsidiaries of Qantas to utilise the capacity.

1.3 Under the *International Air Services Commission Act 1992* (the Act) the Commission must start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. The Determination expires on 30 June 2007.

1.4 Qantas applied to the Commission on 26 September 2006 for a renewal of the Determination. The Commission published a notice on 3 October 2006 inviting other applications for an allocation of the capacity subject to renewal. No other applications were received.

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

2 Delegate's consideration

2.1 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.

2.2 Under the Minister's Policy Statement (No. 5) of 19 May 2004, there is a rebuttable presumption in favour of the carrier seeking the renewal.

2.3 The delegate notes that:

- Qantas has been fully utilising the relevant capacity;
- according to the Register of Available Capacity, there is unlimited capacity available between all points in Australia other than Sydney, Melbourne, Brisbane and Perth and Hong Kong. There are also 40 frequencies per week of available capacity between Sydney, Melbourne, Brisbane and Perth and Hong Kong;
- there are no other applicants seeking capacity on the route; and
- there is no evidence that Qantas has failed to service the route effectively.

2.4 In these circumstances, the delegate concludes that the renewal of Determination [2001] IASC 119 would be of benefit to the public.

2.5 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 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 [2001] IASC 119 allocating capacity on the Hong Kong route to Qantas ([2006] IASC 108)

3.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating 15 frequencies per week with any aircraft type in each direction on the Hong Kong route under the Australia – Hong Kong air services arrangements.

3.2 The determination is for five years from 1 July 2007.

3.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity;

- 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;
- the capacity may be used by Qantas to provide services jointly with Finnair in accordance with:
 - the code share agreement dated 30 May 2000, as amended;
 - or any subsequent code share agreement between Qantas and Finnair for operations on the Australia – Hong Kong route with the prior approval of the Commission;
- under any code share agreement with Finnair:
 - Qantas must price and sell its services on the route independently of Finnair;
 - Qantas must not share or pool revenues on the route with Finnair;
- 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 - Hong Kong 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 - Hong Kong air services arrangements.

Dated: 26 October 2006

Michael Bird
Executive Director
Delegate of the IASC Commissioners