



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

**Determination:** [2006] IASC 109  
**Renewal of:** [2001] IASC 121  
**The Route:** New Zealand  
**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 123, allocating unlimited passenger and freight capacity for operation on the New Zealand route under the Australia – New Zealand air services arrangements.

1.2 The determination was amended to permit another Australian carrier which is a wholly owned subsidiary of Qantas to utilise the capacity and to permit Jetstar and Qantas to provide joint services on the New Zealand route by Decision [2005] IASC 206.

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 for a period of 10 years, and advised that it no longer requires the ability to code share with Swiss International Airlines. 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 utilising the relevant capacity;
- according to the Register of Available Capacity, there is unlimited capacity available on the New Zealand route;
- 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 121 would be of benefit to the public. Where capacity and routes are unrestricted, the Commission may issue a determination for a period of 10 years. The delegate will do so in this case.

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 121 allocating capacity on the New Zealand route to Qantas ([2006] IASC 109)**

3.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating unlimited passenger and freight capacity for operation on the New Zealand route under the Australia – New Zealand air services arrangements.

3.2 The determination is for ten 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 Jetstar to provide joint services with Qantas and vice versa between Australia and New Zealand;
- 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, as amended;
  - 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 services jointly with Lan Chile in accordance with:
  - the code share agreement dated 16 July 1998 and the Amendment Agreement dated 12 January 2000;
  - or any subsequent code share agreement between Qantas and Lan Chile for operations on the Australia - New Zealand route with the prior approval of the Commission; and
- under any code share agreement with Lan Chile:
  - Qantas must price and sell its services on the route independently of Lan Chile;
  - Qantas must not share or pool revenues on the route with Lan Chile;
- the capacity may be used by Qantas to provide services jointly with Aerolineas Argentinas in accordance with:
  - the code share agreement dated 7 September 1998 and the Amendment Agreement dated 27 November 2000;
  - or any subsequent code share agreement between Qantas and Aerolineas Argentinas for operations on the Australia-New Zealand route with the prior approval of the Commission; and
- under any code share agreement with Aerolineas Argentinas:
  - Qantas must price and sell its services on the route independently of Aerolineas Argentinas;

- Qantas must not share or pool revenues on the route with Aerolineas Argentinas;
- the capacity may be used by Qantas to provide services jointly with American Airlines in accordance with:
  - the code share agreement dated 23 September 2004, as amended;
  - or any subsequent code share agreement between Qantas and American Airlines for operations on the Australia-New Zealand route with the prior approval of the Commission; and
- under any 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 services jointly with Air Tahiti Nui in accordance with:
  - the code share agreement dated 12 May 2000 and the Amendment Agreement dated 23 October 2001;
  - or any subsequent code share agreement between Qantas and Air Tahiti Nui for operations on the Australia-New Zealand 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 services on the route, Qantas and Jetstar 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 – New Zealand 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 – New Zealand air services arrangements.

Dated: 26 October 2006

Michael Bird  
Executive Director  
Delegate of the IASC Commissioners