



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2006] IASC 113
Renewal of: [2002] IASC 104
The Route: Japan
The Applicant: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/200616

1 The application for renewal

1.1 On 12 February 2002, the Commission issued Determination [2002] IASC 104, allocating four B767-200 equivalent units of capacity per week in each direction on the Japan route.

1.2 The determination was subsequently varied by a number of Decisions, with the effect that the amount of capacity allocated is now 4.4 B767-200 equivalent units of capacity per week. The variations have also permitted the provision of joint services with Japan Airlines 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 13 February 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 are 8.0 B767-200 units per week of available capacity (including 5.6 B767-200 units available for services to/from Tokyo) during the Northern Summer scheduling period and 5.6 B767-200 units per week of available capacity during the Northern Winter scheduling period (all of which are available for services to/from Tokyo).
- 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 [2002] IASC 104 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 [2002] IASC 104 allocating capacity on the Japan route to Qantas ([2006] IASC 113)

3.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating 4.4 B767-200 equivalent units of capacity per week in each direction on the Japan route under the Australia - Japan air services arrangements.

3.2 The determination is for five years from 14 February 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 any wholly-owned subsidiary of Qantas to provide joint services with Qantas;
- Qantas may use the capacity to provide services jointly with Japan Airlines until end June 2008 in accordance with
 - the codeshare agreement, dated 18 July 2002, or as varied except in relation to:
 - the number of seats to be purchased exceeding 371 per week in each direction; or
 - Melbourne – Tokyo being the city pair served; or
 - any financial adjustment;
 - variations to the codeshare agreement which relate to any of the excepted matters referred to above, subject to the prior approval of the Commission; or
 - any subsequent code share agreement between Qantas and Japan Airlines for operations on the Australia - Japan route, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the code share agreement with Japan Airlines:
 - Qantas must price and sell its services on the route independently of Japan Airlines; and
 - Qantas must not share or pool revenues under any such agreement;
- Qantas must submit to the Commission monthly reports each quarter on the number of code share seats sold by Japan Airlines on Qantas' operated services between Melbourne and Tokyo, for both the hard and soft block seats; and its yields per revenue passenger kilometre for all passenger classes on these services;
- to the extent that the capacity is used to provide joint services on the route, Qantas and any wholly owned subsidiary of 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 - Japan 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 - Japan air services arrangements.

Dated: 26 October 2006

Michael Bird
Executive Director
Delegate of the IASC Commissioners