



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

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| Determination: | [2008] IASC 121 |
| Renewal of: | [2004] IASC 101 |
| The Route: | China |
| The Applicant: | Qantas Airways Limited (ACN 009 661 901) (Qantas) |
| Public Register File: | IASC/APP/200820 |

1 The application for renewal

1.1 On 2 March 2004, the Commission issued Determination [2004] IASC 101 (the Determination) allocating 2,135 seats of capacity per week in each direction on the People's Republic of China (China) route to Qantas. On 4 June 2008, the Determination was varied by Decision [2008] IASC 210, which authorised a free sale code share arrangement between China Eastern Airlines (China Eastern) and Qantas on Qantas-operated services on the China route.

1.2 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 1 March 2009.

1.3 Qantas applied to the Commission on 25 August 2008 for a renewal of the Determination to enable its services to Shanghai and Beijing. The Commission published a notice on 18 September 2008 inviting other applications for an allocation of the capacity subject to renewal. No other applications were received.

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

2 Commission's consideration

2.1 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. The Commission notes that:

- Qantas has been fully utilising the relevant capacity;

- According to the Register of Available Capacity, there are 5,530 seats per week available to and from Sydney, Melbourne, Brisbane and Perth on the China route. There are no restrictions on capacity, frequency and aircraft type from other points in Australia on the China 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.

2.2 In these circumstances, the Commission concludes that the renewal of Determination [2004] IASC 101 would be of benefit to the public.

2.3 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 [2004] IASC 101 allocating capacity on the China route to Qantas ([2008] IASC 121)

3.1 The Commission makes a determination in favour of Qantas, allocating 2,135 seats per week in each direction on the China route under the Australia - China air services arrangements.

3.2 The determination is for five years from 2 March 2009.

3.3 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 China Eastern in accordance with:
 - the code share agreement between Qantas and China Eastern dated 9 July 2008; or
 - any subsequent code share agreement between Qantas and China Eastern for operations on the China route with the prior approval of the Commission;
- under any code share agreement with China Eastern:

- Qantas must price and sell its services on the route independently of China Eastern;
- Qantas must not share or pool revenues on the route with China Eastern;
- 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 Qantas 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: 8 October 2008

John Martin
Chairman

Philippa Stone
Member

Ian Smith
Member