



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2008] IASC 127
Renewal of: [2004] IASC 120
The Route: Japan
The Applicant: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/200820

1 The application for renewal

1.1 On 3 June 2004, the Commission issued Determination [2004] IASC 120 (the Determination) allocating three B767-200 units per week in each direction on the Japan route to Qantas. The determination was subsequently varied by Decisions [2006] IASC 209, [2006] IASC 217, [2006] IASC 218, [2007] IASC 204, [2008] IASC 212 and [2008] IASC 216.

1.2 The current effect of these decisions is that under the Determination, Qantas is authorised to provide joint services with its wholly-owned subsidiaries and Jetstar is authorised, subject to conditions, to code share with Japan Airlines on the Sydney/Gold Coast-Osaka sector.

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 7 November 2009.

1.4 Qantas applied to the Commission on 25 August 2008 for a renewal of the Determination. 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.

1.5 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:

- after Qantas completes its operational changes on the Japan route in December 2008, Qantas will be utilising 42.6 B767-200 units, while having a total allocation of 71.1 B767-200 units per week on the route;
- according to the Register of Available Capacity, there are 7.9 B767-200 units of capacity available, of which up to 5.5 units may be 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.

2.2 The Commission is satisfied that for the majority of the period of the Determination, Qantas has fully utilised the capacity in question. However, as noted above, from December 2008, there will be a substantial under utilisation by Qantas of its total capacity allocation on the Japan route. The Commission recognises that there is a large and complex set of determinations held by Qantas on the Japan route. The Commission accepts that Qantas may require a short period of time in which to consider how this structure might best be rationalised in light of the airline's reduced capacity requirements on the route,. However, the Commission expects Qantas to provide the Commission with a comprehensive review of its requirements for capacity on the Japan route when providing its next capacity utilisation report in November/December 2008.

2.3 The Commission anticipates that such a review would result in a rationalisation of the capacity allocated on this route through Qantas seeking reductions in capacity allocated under appropriate determinations. The Commission notes the very limited amount of capacity currently available for allocation on the Japan route and that this strengthens the justification for Qantas returning promptly capacity it no longer requires. The Commission concludes that the renewal of Determination [2004] IASC 120 would be of benefit to the public.

2.4 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 120 allocating capacity on the Japan route to Qantas ([2008] IASC 127)

3.1 The Commission makes a determination in favour of Qantas, allocating three B767 units per week of capacity in each direction on the Japan route under the Australia – Japan air services arrangements.

3.2 The determination is for five years from 8 November 2009.

3.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity;
- the capacity may be used by any wholly-owned subsidiary of Qantas to provide joint services with Qantas;
- 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;”
- 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;
- Qantas is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- Jetstar may use the capacity to provide services jointly with Japan Airlines until 31 December 2010 in accordance with:
 - the code share agreement of 9 February 2007, signed by Jetstar and Japan Airlines, as amended, with such additional conditions (if any) as the Commission may require, prior to code share services commencing, or as varied except in relation to:
 - Sydney/Gold Coast – Osaka being the city pair served; or
 - any financial adjustment; or
 - any subsequent code share agreement between Jetstar 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:

- Jetstar must price and sell its services on the route independently of Japan Airlines;
- Jetstar must not share or pool revenues under any such agreement; 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
- Jetstar must submit to the Commission reports six-monthly on the number of code share seats sold by Japan Airlines on Jetstar-operated services between Sydney/Gold Coast - Osaka; and its yields per revenue passenger kilometre for all passenger classes on these services”.
- 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: 8 October 2008

John Martin
Chairman

Philippa Stone
Member

Ian Smith
Member