



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

<b>Determination:</b>	<b>[2009] IASC 123</b>
<b>Renewal of:</b>	<b>[2004] IASC 116</b>
<b>The Route:</b>	<b>Hong Kong</b>
<b>The Applicant:</b>	<b>Qantas Airways Ltd (ACN 009 661 901) (Qantas)</b>
<b>Public Register File:</b>	<b>IASC/APP/200930</b>

#### 1 The application for renewal

1.1 On 11 October 2004, the delegate of the Commission issued Determination [2004] IASC 116 (the Determination), allocating capacity on the Hong Kong route to Qantas. Following amendment by Decision [2004] IASC 216, the allocation is now for five frequencies per week with any aircraft type in each direction on the Hong Kong route. Decision [2007] IASC 205 amended the Determination to authorise code sharing between Qantas and Air France.

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 30 June 2010.

1.3 Qantas applied to the Commission on 11 September 2009 for a renewal of the Determination. The Commission published a notice on 12 October 2009 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.

2.2 The Commission notes that:

- Qantas has been fully utilising the relevant capacity;

- according to the Register of Available Capacity, there are 39 frequencies per week of capacity available for passenger services 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;

2.3 In these circumstances, the Commission concludes that the renewal of Determination [2004] IASC 116 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 116 allocating capacity on the Hong Kong route to Qantas ([2009] IASC 123)**

3.1 The Commission makes a determination in favour of Qantas, allocating five frequencies per week with any aircraft type in each direction between Australia and Hong Kong under the Australia – Hong Kong air services arrangements.

3.2 The determination is for five years from 1 July 2010.

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 Air France in accordance with:
  - the code share agreement dated 31 October 2004 and the amendment annex dated 16 April 2007, between Qantas and Air France, for operations on the Australia – Hong Kong Route;

- or any subsequent code share agreement between Qantas and Air France, for operations on the Australia – Hong Kong Route with the prior approval of the Commission;
- under any code share agreement with Air France:
  - Qantas must price and sell its services on the route independently of Air France;
  - Qantas must not share or pool revenues on the route with Air France;
- 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: 20 October 2009

John Martin  
Chairman

Philippa Stone  
Member

Ian Smith  
Member