



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

| | |
|------------------------------|--|
| Determination: | [2010] IASC 113 |
| Renewal of: | [2005] IASC 127 |
| The Route: | France – Route 3 (New Caledonia) |
| The Applicant: | Qantas Airways Ltd (ACN 009 661 901) (Qantas) |
| Public Register File: | IASC/APP/201013 |

1 The application for renewal

1.1 On 7 November 2005 the Commission issued Determination [2005] IASC 127 (the Determination) allocating 0.25 units of capacity per week to Qantas on the France – Route 3 (New Caledonia) 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 12 December 2011.

1.3 Qantas applied to the Commission on 10 September 2010 for a renewal of the Determination. The Commission published a notice on 14 October 2010 inviting submissions or 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 is no capacity remaining available for allocation to Australian carriers on the New Caledonia route; however, 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 [2005] IASC 127 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 [2005] IASC 127 allocating capacity on the France – Route 3 (New Caledonia) route to Qantas ([2010] IASC 113)

3.1 The Commission makes a determination in favour of Qantas, allocating 0.25 units of capacity per week in each direction on the France – Route 3 (New Caledonia) route under the Australia – France air services arrangements.

3.2 The determination is for five years from 13 December 2011.

3.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity;
- only Qantas is permitted to utilise the capacity;
- the capacity may be used by Qantas to provide services jointly with Air Caledonie International in accordance with:
 - the code share agreement dated 6 August 1997, signed by Qantas and Air Caledonie International; or
 - any subsequent code share agreement between Qantas and Air Caledonie International for operations on the France - Route 3 route with the prior approval of the Commission; and
- under any code share agreement with Air Caledonie International:
 - Qantas must price its services on the route independently of Air Caledonie International;
 - Qantas must not share or pool revenues on the route with Air Caledonie International;

- 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 the airline as an Australian carrier under the Australia – France 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 – France air services arrangements.

Dated: 25 October 2010

Ian Smith
Member Presiding

Stephen Bartos
Member