



INTERNATIONAL AIR SERVICES COMMISSION

RENEWAL DETERMINATION

DETERMINATION NO: [2001] IASC 121
RENEWAL OF: DETERMINATION IASC/DET/9622
THE ROUTE: NEW ZEALAND
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901) (QANTAS)
PUBLIC REGISTER FILE: IASC/APP/200124

1 The application for renewal

1.1 On 26 November 1996, the Commission issued Determination IASC/DET/9622 (the determination) renewing the allocation of capacity to Qantas on the New Zealand route. The determination was varied by decisions IASC/DEC/9818, IASC/DET/9825 and IASC/DET/9907 to permit joint operations with Lan Chile, British Airways, Aerolineas Argentinas, American Airlines and Polynesian Airlines. The determination was also varied by [2000] IASC 210 to permit joint operations beyond New Zealand with Air Tahiti Nui and by [2001] IASC 216 to permit joint operations with the same airline between Australia and New Zealand. Following changes to the Australia – New Zealand air services arrangements, decision [2001] IASC 208 varied the determination to remove limitations on carriage beyond New Zealand. The determination expires on 30 June 2002.

1.2 Qantas has applied to the Commission for a renewal of the determination. The Commission published a notice on 31 August 2001 inviting submissions about the application, and other applications for an allocation of the capacity subject to renewal. No submissions or other applications were received.

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

2 Provisions of relevant air services arrangements

2.1 Under revised arrangements, which have interim effect pending ratification, capacity for Australian carriers beyond New Zealand is unlimited, as are code sharing rights. Australian carriers are also permitted to perform sixth freedom passenger and freight operations and seventh freedom freight operations between New Zealand and third countries.

3 Commission's consideration

3.1 Under the Minister's Policy Statement (No. 3), of 23 April 1997, as amended on 9 March 1999, there is a rebuttable presumption in favour of the carrier seeking the renewal.

3.2 The Commission notes that:

- Qantas has been fully utilising the relevant capacity;
- there are no other applicants seeking capacity on the route; and
- there is no evidence that Qantas has failed to service the route effectively.

3.3 In these circumstances, the Commission concludes that the renewal of Determination IASC/DET/9622 would be of benefit to the public.

3.4 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 *International Air Services Commission Act 1992*, 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.

4 Determination for renewal of Determination IASC/DET/9622 allocating capacity on the New Zealand route to Qantas ([2001] IASC 121)

4.1 The Commission makes a fresh determination in favour of Qantas, allocating unlimited passenger and freight capacity for operation in accordance with the terms of the Australia – New Zealand air services arrangements.

4.2 The determination is for 5 years from 1 July 2002.

4.3 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 British Airways in accordance with:
 - the code share agreement dated 5 October 1997; or
 - any new code share agreement, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the arrangements with British Airways, Qantas may only price and market its services, or share or pool revenues/profits on the route, jointly

with British Airways as long as such practices are authorised under the *Trade Practices Act 1974* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal;

- the capacity may be used by Qantas to provide services jointly with Lan Chile in accordance with:
 - the code share agreement dated 16 July 1998;
 - or any subsequent code share agreement between Qantas and Lan Chile for operations on the Australia-New Zealand route with the prior approval of the Commission; and
- under any code share agreement with Lan Chile:
 - Qantas must price and sell its services on the route independently of Lan Chile;
 - Qantas must not share or pool revenues on the route with Lan Chile;
- the capacity may be used by Qantas to provide services jointly with Aerolineas Argentinas in accordance with:
 - the code share agreement dated 7 September 1998;
 - or any subsequent code share agreement between Qantas and Aerolineas Argentinas for operations on the Australia-New Zealand route with the prior approval of the Commission; and
- under any code share agreement with Aerolineas Argentinas:
 - Qantas must price and sell its services on the route independently of Aerolineas Argentinas;
 - Qantas must not share or pool revenues on the route with Aerolineas Argentinas;
- the capacity may be used by Qantas to provide services jointly with American Airlines in accordance with:
 - the code share agreement dated 15 September 1995;
 - or any subsequent code share agreement between Qantas and American Airlines for operations on the Australia-New Zealand route with the prior approval of the Commission; and
- under any code share agreement with American Airlines:
 - Qantas must price and sell its services on the route independently of American Airlines;
 - Qantas must not share or pool revenues on the route with American Airlines;

- the capacity may be used by Qantas to provide services jointly with Polynesian Airlines in accordance with:
 - the code share agreement dated 10 May 1999;
 - or any subsequent code share agreement between Qantas and Polynesian Airlines for operations on the Australia-New Zealand route with the prior approval of the Commission; and
- under any code share agreement with Polynesian Airlines:
 - Qantas must price and sell its services on the route independently of Polynesian Airlines;
 - Qantas must not share or pool revenues on the route with Polynesian Airlines;
- the capacity may be used by Qantas to provide services jointly with Air Tahiti Nui in accordance with:
 - the code share agreement dated 12 May 2000;
 - or any subsequent code share agreement between Qantas and Air Tahiti Nui for operations on the Australia-New Zealand route with the prior approval of the Commission; and
- under any code share agreement with Air Tahiti Nui:
 - Qantas must price and sell its services on the route independently of Air Tahiti Nui;
 - Qantas must not share or pool revenues on the route with Air Tahiti Nui;
- 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 – New Zealand 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 New Zealand air services arrangements.

Dated: 13 December 2001

Ross Jones
Chairman

Michael Lawriwsky
Member

Stephen Lonergan
Member