



# INTERNATIONAL AIR SERVICES COMMISSION

## RENEWAL DETERMINATION

**DETERMINATION NO:** [2002] IASC 103  
**RENEWAL OF:** DETERMINATION IASC/DET/9727  
**THE ROUTE:** UNITED KINGDOM  
**THE APPLICANT:** QANTAS AIRWAYS LIMITED  
(ACN 009 661 901) (QANTAS)  
**PUBLIC REGISTER FILE:** IASC/APP/200124

### 1 The application for renewal

1.1 On 30 June 1997, the Commission issued Determination IASC/DET/9727 (the determination) allocating seven services per week in each direction between Australia and the United Kingdom. The determination expires on 29 June 2002.

1.2 On 21 August 2001, Qantas applied to the Commission for a renewal of the determination for five years. 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 other submissions or applications were received.

1.3 On 21 November 2001, in its regular capacity utilisation report to the Commission, Qantas stated that it was utilising 14 of the 21 weekly services allocated to it. The Commission issued [2001] IASC 124 on 13 December 2001 renewing IASC/DET/9707 which allocates 14 services per week to Qantas.

1.4 On 11 January 2002, Qantas submitted that it planned to utilise four of the seven unused services in the Northern Summer 2002 period and would fully utilise the seven services by November 2003. Qantas also submitted that demand on the Australia-UK/Europe routes has been adversely affected by the events of September 11 and this has hampered its opportunity to add a greater volume of capacity in 2002.

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. 3), of 23 April 1997, as amended on 9 March 1999, there is a rebuttable presumption in favour of the carrier seeking the renewal.

2.2 There is a condition in all Commission determinations that requires capacity to be fully utilised, as set out in section 15 of the *International Air Services Commission Act 1992* (the Act). In various circumstances the Commission has shown a considerable degree of flexibility in allowing Qantas to retain unused capacity on a number of routes, including on the UK route. In these cases, the Commission has

accepted that there is a clear intention by Qantas to resume operations within a reasonable time frame and no other carrier has been seeking the capacity in question.

2.3 In the current case, the Commission has taken account of the difficult market circumstances faced in the wake of the events of September 11 and accepts that this provides good grounds for allowing Qantas to continue to retain some unused capacity. It is therefore willing to allow Qantas to retain the four weekly units which it intends to resume using in the Northern Summer 2002 period. This is, in the Commission's view, a reasonable length of time for the capacity to remain unused, in light of current circumstances.

2.4 However, the Commission considers that retention by Qantas of the remaining three weekly services until late 2003 involves an excessive length of time for the capacity to remain allocated but unused. At least two and generally three of these services have already been unused for a considerable length of time.

2.5 The Commission notes that Qantas has in the past indicated its intention to fully utilise this capacity by specified dates but has subsequently sought and obtained the Commission's agreement to continue not fully using it. For example, in May 2000, Qantas was using 17 of its 21 services per week and indicated its intention to fully use the capacity by Northern Winter 2000. In the event, it continued to operate only 17 services through the NW 2000 period. In late 2000, Qantas advised its intention to fully use the capacity by the Northern Summer 2001 period. At the start of that period it had increased to 19 services per week, still leaving two weekly services unused. On each occasion, the Commission granted Qantas' request to continue to hold the unused capacity.

2.6 The Commission considers that a further very lengthy holding of this unused capacity as now requested by Qantas is not consistent with the "use it or lose it" principle of the Act. In circumstances where Qantas was fully using the capacity under this determination, the Commission would have renewed the determination with the full amount of allocated capacity. However, in circumstances where the airline is not fully using the capacity, and for the reasons outlined above, the Commission concludes that renewal of IASC/DET/9627 with an allocation of four services per week would be of benefit to the public.

2.7 The Commission notes that the effect of this renewal is that three units of capacity will be returned to the shelf and will be available for allocation to Australian carriers. Qantas is entirely free to apply for an allocation of some or all of that capacity in due course, (perhaps once market circumstances are clearer), in accordance with the Commission's normal procedures, which can accommodate urgent applications for additional capacity if such becomes necessary. However, Qantas would of course need to demonstrate its commitment to utilise the capacity within a reasonable period of time. 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 IASC/DET/9727 allocating capacity on the United Kingdom route to Qantas ([2002] IASC 103)**

3.1 The Commission makes a fresh determination in favour of Qantas Airways Limited, allocating four services per week in each direction between Australia and the United Kingdom.

3.2 The determination is for 5 years from 30 June 2002.

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 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;
- 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 – United Kingdom 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 – United  
Kingdom air services arrangements.

Dated: 4 February 2002

Ross Jones  
Chairman

Michael Lawriwsky  
Member

Stephen Lonergan  
Member