



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2004] IASC 119
Renewal of: [2000] IASC 107
The Route: South Africa
The Applicants: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/200420

1 The application for renewal

1.1 On 21 February 2000 the Commission issued Determination [2000] IASC 107 (the Determination) allocating one frequency per week on the South Africa route. The Determination was subsequently varied by decisions [2000] IASC 217, [2001] IASC 206, [2002] IASC 212 and [2003] IASC 204 to permit code sharing with South African Airways (SAA) on the 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 expiry of the Determination. The Determination expires on 27 July 2005.

1.3 Qantas applied to the Commission on 6 September 2004 for a renewal of the Determination. The Commission published a notice on 9 September 2004 inviting applications for an allocation of the capacity subject to renewal. No applications were received.

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

2 Delegate's consideration

2.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (the Act) and regulation 3A of the *International Air Services Commission Amendment Regulations 2003 (No.1)*, the delegate of the Commission considers the Qantas application.

2.2 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.

2.3 The delegate notes that:

- Qantas has been fully utilising the relevant capacity;
- there are no other applicants seeking capacity on the route,
- according to the Register of Available Capacity there is no capacity available or in prospect for allocation; and
- there is no evidence that Qantas has failed to service the route effectively.

2.4 In these circumstances, the delegate concludes that the renewal of Determination [2000] IASC 107 would be of benefit to the public.

2.5 Qantas requested that the renewal be issued with the same code sharing approval and conditions, as are contained in decision [2003] IASC 204 which varied the Determination. However, the code share approval expires prior to the renewed determination coming into effect, the code sharing approval and conditions will therefore not be included in the renewed determination. Approval or otherwise of code sharing arrangements beyond 30 June 2005 will be the subject of a separate process.

2.6 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 [2000] IASC 107 allocating capacity on the South Africa route to Qantas ([2004] IASC 119)

3.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating one frequency per week in each direction between Australia and South Africa.

3.2 The determination is for 5 years from 28 July 2005.

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;
- 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 – South Africa 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 – South Africa air services arrangements.

Dated: 11 October 2004

Michael Bird
Executive Director
Delegate of the IASC Commissioners