



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2005] IASC 125
Renewal of: [2001] IASC 114
The Route: South Africa
The Applicant: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/200511

1 The application for renewal

1.1 On 28 August 2001 the Commission issued Determination [2001] IASC 114 (the Determination) allocating two frequencies of capacity per week to Qantas on the South Africa 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 26 September 2006.

1.3 Qantas applied to the Commission on 30 August 2005 for a renewal of the Determination. The Commission published a notice on 6 September 2005 inviting submissions or other applications for an allocation of the capacity subject to renewal. No submissions or 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;
- 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 [2001] IASC 114 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 [2001] IASC 114 allocating capacity on the South Africa – route to Qantas ([2005] IASC 125)

3.1 The Commission makes a determination in favour of Qantas, allocating two frequencies of capacity per week in each direction on the South Africa route under the Australia - South Africa air services arrangements.

3.2 The determination is for five years from 27 September 2006.

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;
- Qantas may use the capacity to provide services jointly with South Africa Airlines (SAA) until 18 December 2006 in accordance with:
 - the Codeshare Agreement dated 18 December 2000 amended by the letter from Qantas to SAA of 19 April 2001 to include freight and the Commercial Agreement dated 18 December 2000 between Qantas and SAA;
 - any amendments to the code share agreement (including to Annex 1), or to the commercial agreement in so far as it affects the former, must be approved by the Commission;
 - any new code share agreement or commercial agreement in so far as it affects the former must be approved by the Commission;
- under the code share agreement with SAA:

- Qantas and SAA must withdraw from all IATA tariff coordination activities in relation to air fare levels between Australia and South Africa;
- Qantas must price and sell its services on the route independently of SAA;
- Qantas must not share or pool revenues under any such agreement; and
- Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- the approval will remain in effect only while Qantas and SAA together operate at least ten return services per week on the South Africa route. Temporary reductions from this level may be permitted depending on circumstances, but only with the prior approval of the Commission;
- Qantas must submit to the Commission reports each quarter on the number of code share seats available for sale and sold by it on each of SAA's operated services and by SAA on each of Qantas' operated services;
- 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: 7 November 2005

John Martin
Chairman

Vanessa Fanning
Member

Michael Lawriwsky
Member