



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

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| Determination: | [2006] IASC 111 |
| Renewal of: | [2001] IASC 125 |
| The Route: | United States |
| The Applicant: | Qantas Airways Ltd (ACN 009 661 901) (Qantas) |
| Public Register File: | IASC/APP/200616 |

1 The application for renewal

1.1 On 13 December 2001, the Commission issued Determination [2001] IASC 125 (the Determination), providing that Qantas may operate capacity on the South Pacific route in each direction between Australia and the United States consistent with the terms of the Australia - United States air transport arrangements.

1.2 The Determination was amended to permit code sharing on the services of Air Tahiti Nui between Sydney, Papeete and New York, and between Auckland and Papeete by Resolution [2005] IASC R02. The determination was also varied to permit the provision of joint services with Mexicana and to permit the utilisation of capacity by an Australian carrier that is a wholly owned subsidiary of Qantas by Decision [2006] IASC 208.

1.3 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 30 June 2007.

1.4 Qantas applied to the Commission on 26 September 2006 for a renewal of the Determination. It asked that the determination be made for a period of 10 years, noting that the Australia – United States air services arrangements effectively provide for unlimited capacity entitlements for incumbent carriers. The Commission published a notice on 3 October 2006 inviting other applications for an allocation of the capacity subject to renewal. No other applications were received.

1.5 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 utilising the relevant capacity;
- according to the Register of Available Capacity, there is unlimited capacity available between all points in Australia and the United States on the South Pacific and North Pacific routes.
- there are no other applicants seeking capacity on the route; and
- there is no evidence that Qantas has failed to service the route effectively.

2.4 In these circumstances, the delegate concludes that the renewal of Determination [2001] IASC 125 would be of benefit to the public. The delegate will issue the determination for a period of five years, rather than the 10 years sought by Qantas. The Minister's policy statement states that determinations may be issued for a period of 10 years only where capacity and routes are unrestricted. The utilisation of Qantas' capacity allocation is restricted to operations on the South Pacific routing.

2.5 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 125 allocating capacity on the United States route to Qantas ([2006] IASC 111)

3.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, providing that Qantas may operate capacity on the South Pacific route in each direction between Australia and the United States consistent with the terms of the Australia - United States air transport arrangements.

3.2 The determination is for five years from 1 July 2007

3.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity;
- only Qantas or another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity;
- neither Qantas nor another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- the capacity may be used by any wholly-owned subsidiary of Qantas to provide joint services with Qantas
- 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, as amended;
 - 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 cargo services jointly with American Airlines in accordance with the cargo blocked space agreement between Qantas and American Airlines dated 13 March 1997 as extended, or with prior approval by the Commission, as amended from time to time;
- the capacity may be used by Qantas to provide passenger services jointly with American Airlines in accordance with:
 - the code share agreement dated 23 September 2004 and the Amendment Agreement dated 3 January 2006;
 - or any subsequent code share agreement between Qantas and American Airlines for operations on the Australia - United States route with the prior approval of the Commission; and
- under any passenger 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 cargo services jointly with Federal Express in accordance with:
 - the code share agreement dated 6 August 1998, as amended;
 - or any subsequent code share agreement between Qantas and Federal Express for operations on the Australia - United States route with the prior approval of the Commission; and
- under any code share agreement with Federal Express:
 - Qantas must price and sell its services on the route independently of Federal Express;
 - Qantas must not share or pool revenues on the route with Federal Express;
- the capacity may be used by Qantas to provide cargo services jointly with Air Pacific in accordance with:
 - the Capacity Purchase/Sale Agreement dated 14 October 1996 between Qantas and Air Pacific, as extended from time to time in accordance with their terms, or as varied except in relation to Article 1 - Capacity Sale (and associated attachments) and Article 3 - Schedule of Flights (and associated attachments); or
 - variations to the Capacity Purchase/Sale Agreement which relate to any of the excepted matters referred to above, subject to the prior approval of the Commission; or
 - any new joint service arrangements between Qantas and Air Pacific for operations on the Australia - United States route whether or not it replaces one or both of the existing Agreements, with the prior approval of the Commission;
- under any code share agreement with Air Pacific:
 - Qantas must price and sell its services on the route independently of Air Pacific;
 - Qantas must not pool revenues on the route with Air Pacific;
- the capacity may be used by Qantas to provide cargo services jointly with United Parcel Service in accordance with:
 - the code share agreement dated 20 January 1998;

- or any subsequent code share agreement between Qantas and United Parcel Service for operations on the Australia-United States route with the prior approval of the Commission; and
- under any code share agreement with United Parcel Service:
 - Qantas must price and sell its services on the route independently of United Parcel Service;
 - Qantas must not share or pool revenues on the route with United Parcel Service;
- 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 and the Amendment Agreement of 4 July 2005;
 - or any subsequent code share agreement between Qantas and Air Tahiti Nui for operations on the Australia-United States 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;
- the capacity may be used by Qantas to provide services jointly with Mexicana in accordance with:
 - the code share agreement dated 8 July 2006, as amended;
 - or any subsequent code share agreement between Qantas and Mexicana for operations on the Australia – USA route with the prior approval of the Commission;
- under any code share agreement with Mexicana:
 - Qantas must price and sell its services on the route independently of Mexicana;
 - Qantas must not share or pool revenues on the route with Mexicana;
- to the extent that the capacity is used to provide joint services on the route, Qantas and any wholly-owned subsidiary of 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 States air transport 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 States air transport arrangements.

Dated: 26 October 2006

Michael Bird
Executive Director
Delegate of the IASC Commissioners