



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

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| Determination: | [2008] IASC 105 |
| Renewal of: | [2003] IASC 108 |
| The Route: | South Africa |
| The Applicant: | Qantas Airways Ltd (ACN 009 661 901) (Qantas) |
| Public Register File: | IASC/APP/200715 |

1 The application for renewal

1.1 On 30 May 2003, the Commission issued Determination [2003] IASC 108 (the Determination) allocating one frequency per week in each direction on the South Africa route and authorising code sharing between Qantas and South African Airways (SAA). Under a subsequent Commission decision, the code sharing is authorised until 31 December 2008.

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 20 October 2008.

1.3 Qantas applied to the Commission on 24 August 2007 for a renewal of the Determination, but requested that renewal of the Determination be delayed until the outcome was known of the Commission's consideration in late 2007 of the airline's application to extend code sharing with South African Airways. Qantas had sought separately authorisation to continue code sharing with SAA until 31 December 2010 with that authorisation to be included in the renewal determination. The Commission published a notice on 6 September 2007 inviting other applications for an allocation of the capacity subject to renewal. No other 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 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. The delegate notes that:

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

2.3 In these circumstances, the delegate concludes that the renewal of Determination [2003] IASC 108 would be of benefit to the public.

2.4 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 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. In particular, the conditions attaching to this determination reflect the Commission's continued authorisation of code sharing between Qantas and SAA beyond 31 December 2007 until 31 December 2008. See Decision [2007] IASC 216 for a discussion of the Commission's consideration of Qantas' application to continue code sharing with SAA.

3 Determination for renewal of Determination [2003] IASC 108 allocating capacity on the South Africa route to Qantas ([2008] IASC 105)

3.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating one frequency 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 21 October 2008.

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 is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;

- SAA is permitted to code share on Qantas flights operated to and from South Africa until 31 December 2008, consistent with the Qantas/SAA code share and commercial agreements provided to the Commission, subject to the following conditions
 - 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;
 - Qantas must price and sell its services on the route independently;
 - Qantas and SAA must withdraw from all IATA tariff coordination activities in relation to air fare levels between Australia and South Africa;
 - Qantas must not share or pool revenues under any such agreement;
 - Qantas must take all reasonable steps to ensure that all passengers are informed, at the time of ticket reservation, of the carrier actually operating the flight;
 - 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 in exceptional 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: 27 May 2008

Michael Bird
Executive Director
Delegate of the IASC Commissioners