



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Decisions: [2014] IASC 110
Renewal of: [2009] IASC 124
The Route: Hong Kong
The Applicant: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/201462

The Commission makes a fresh determination allocating in favour of Qantas one all-cargo frequency per week on the Hong Kong route.

1 The application for renewal

1.1 On 20 October 2009, the Commission issued Determination [2009] IASC 124 (the Determination) allocating one all-cargo frequency per week to Qantas Airways Limited (Qantas) on the Hong Kong route.

1.2 Under section 17 of 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 13 July 2015. In view of this, the Commission sent a letter to Qantas on 1 July 2014, inviting it to apply for renewal if it wished to renew the Determination.

1.3 On 18 July 2014, Qantas applied to the Commission for the renewal of the Determination for five years from 14 July 2015. Qantas sought to renew the Determination on the following basis:

- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas; and
- the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary and by any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 21 July 2014 inviting other applications for the capacity. No applications were received. All material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

2 Commission's consideration

2.1 Under section 8 of the Act, the Commission may make a fresh determination allocating the capacity to which the original determination relates. In considering an

application for renewal, the Commission must make the same allocation of capacity as the original determination unless the Commission is satisfied that the allocation is no longer of benefit to the public. In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statement made by the Minister under section 11 of the Act.

2.2 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), in circumstances where there is only one applicant for allocation of capacity on a route, or where the amount of available capacity is equal to or exceeds the total amount of capacity applied for, only the criteria in paragraph 4 are applicable.

2.3 Paragraph 4 provides that the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and are not reasonably capable of implementing their applications.

2.4 The Commission notes that:

- there are no other applicants seeking capacity on the route;
- there is additional capacity available for all-cargo services under the Australia-Hong Kong air services arrangements; and
- Qantas is an established international carrier incumbent on the Hong Kong route, and is therefore reasonably capable of obtaining the necessary approvals and of implementing its proposed service.

2.5 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal which may only be rebutted, after the start-up phase, by applying the following criteria:

- whether the carrier seeking renewal has failed to service the route effectively; and
- whether the use of the capacity in whole or part by another Australian carrier that has applied for capacity would better serve the public having regard to both the criteria in paragraphs 4 and 5.

2.6 The Commission has no information that Qantas has failed to service the route effectively and since no other application was received, the Commission did not apply the paragraph 5 criteria.

2.7 In relation to Qantas' request to allow the capacity to be used by either Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas, including for joint services, the Commission considers there are no competition issues with this, and has decided to include the conditions requested by Qantas.

2.8 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Paragraph 15(2)(e) requires the inclusion of a condition stating the extent to which the carrier may use that capacity in joint services with another carrier. As is normal practice, the Commission will also include a condition which requires Qantas to comply with the Australian Consumer Law.

2.9 Nothing in this determination should be taken as indicating either approval or disapproval by the ACCC. This determination is made without prejudicing, in any way, possible future consideration by the ACCC.

3 Determination for renewal of Determination [2009] IASC 124 allocating capacity to Qantas on the Hong Kong route ([2014] IASC 110)

3.1 In accordance with section 8 of the Act, the Commission makes a fresh determination in favour of Qantas, allocating one all-cargo frequency per week on the Hong Kong route in accordance with the Australia-Hong Kong air services arrangements.

3.2 The determination is valid for five years from 14 July 2015.

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 use the capacity;
- the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary and by any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas;
- Nothing in this determination exempts the airlines from complying with the Australian Consumer Law; and.
- 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-Hong Kong 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.

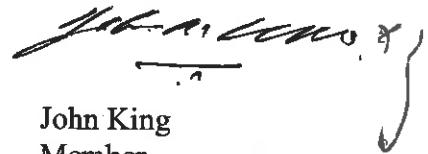
Dated: 1 August 2014



Jill Walker
Chairwoman



Ian Douglas
Member



John King
Member