



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

**Determination:** [2011] IASC 117  
**Renewal of:** [2006] IASC 108  
**The Route:** Hong Kong  
**The Applicant:** Qantas Airways Ltd  
(ACN 009 661 901) (Qantas)  
**Public Register File:** IASC/APP/201124

## 1 The application for renewal

1.1 On 26 October 2006, the delegate of the Commission issued Determination [2006] IASC 108, allocating to Qantas 15 frequencies per week with any aircraft type in each direction on the Hong Kong route. The Determination was subsequently varied by Decision [2007] IASC 205 to permit Air France to code share with Qantas.

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 30 June 2012.

1.3 Qantas applied to the Commission on 11 October 2011 for a renewal of the Determination. In its application, Qantas sought a variation to add conditions enabling capacity to be used by any wholly-owned subsidiary of Qantas and to be used by Qantas to provide services jointly with any wholly-owned subsidiary of Qantas.

1.4 The Commission published a notice on 20 October 2011 inviting submissions about the application. One submission was received from the Australian and International Pilots Association. The Association raised concerns that the Commission's approval of the variation may ultimately provide a vehicle for Qantas management to avoid the intent of the *Qantas Sale Act 1992* and to shrink Qantas in favour of Jetstar. The Association also expressed a concern about consumer awareness aspects of code sharing between full service and low cost carriers.

1.5 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.

2.2 The Commission notes that:

- Qantas has been servicing the route effectively; and
- there are no other applicants seeking capacity on the route.

2.3 In these circumstances, the Commission concludes that the renewal of Determination [2006] IASC 108 would be of benefit to the public.

2.4 In relation to the variation sought by Qantas for authority for its wholly-owned subsidiaries to use the capacity allocated to it, the Commission will authorise the use of the capacity by Qantas' wholly-owned subsidiaries on the Hong Kong route, including in joint services with Qantas.

2.5 The Commission notes that it has previously allocated capacity to Qantas to be used by its wholly-owned subsidiaries in the interests of providing commercial and operational flexibility, consistent with amendments to the Act made in 1994. The Commission considers that approval of this variation is consistent with the object of the Act and the Minister's policy statement, both of which make it clear that the Commission should have regard to the need for Australian airlines to be able to compete effectively with one another and with foreign airlines. Moreover, the policy statement states that the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public.

2.6 In relation to joint services, the Commission will include a condition which requires Qantas and any wholly owned subsidiary to comply with the Australian Consumer Law and to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flight.

### **3 Determination for renewal of Determination [2006] IASC 108 allocating capacity on the Hong Kong route to Qantas ([2011] IASC 117)**

3.1 The Commission makes a determination in favour of Qantas, allocating 15 frequencies per week with any aircraft type in each direction on the Hong Kong route under the Australia – Hong Kong air services arrangements.

3.2 The determination is for five years from 1 July 2012.

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 Qantas to provide services jointly with any wholly-owned subsidiary of Qantas;
- the capacity may be used by Qantas to provide services jointly with Air France in accordance with:

- the code share agreement dated 31 October 2004, as amended, between Qantas and Air France, for operations on the Australia – Hong Kong Route;
- or any subsequent code share agreement between Qantas and Air France, for operations on the Australia – Hong Kong Route with the prior approval of the Commission or the delegate;
- under any code share agreement with Air France:
  - Qantas must price and sell its services on the route independently of Air France;
  - Qantas must not share or pool revenues on the route with Air France;
- where the capacity is used to provide joint services on the route, nothing in this determination exempts Qantas and any wholly owned subsidiary from complying with the Australian Consumer Law. The airlines are required to take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight;
- 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, 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 - Hong Kong air services arrangements.

Dated: 19 December 2011



Jill Walker  
Chairperson



Stephen Bartos  
Member

