

RENEWAL DETERMINATION

DETERMINATION NO: [2000] IASC 104
RENEWAL OF: DETERMINATION IASC/DET/9503
THE ROUTE: VIETNAM
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901)

1 The application for renewal

1.1 On 23 June 1995, the Commission issued Determination IASC/DET/9503 (the determination) allocating 3 B767 equivalent units per week to Qantas Airways Limited (Qantas) on the Vietnam route. Qantas serves the route as marketing carrier on three Vietnam Airlines' services per week under a code share agreement with Vietnam Airlines.

1.2 The determination expires on 22 June 2000.

1.3 Qantas has applied to the Commission seeking a renewal of the determination. The Commission subsequently published a notice inviting submissions from any interested person about the renewal of the determination, and other applications for an allocation of all or part of the capacity subject to renewal. No submissions or other applications were received.

2 Commission's consideration

2.1 Under section 11 of the *International Air Services Commission Act 1992* (the Act), the Minister may make Policy Statements setting out matters relevant to the Commission's performance of its functions. Under the Policy Statement (No. 3), issued by the Minister on 23 April 1997, there is a rebuttable presumption in favour of the carrier seeking the renewal.

2.2 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.

2.3 The Commission has previously expressed concerns at the inefficient use of Australian entitlements resulting from the terms of the air services arrangements in relation to the code share capacity on this route. In the absence of any proposals for more efficient utilisation of this capacity, the Commission concludes that the renewal of Determination IASC/DET/9503 would be of benefit to the public.

2.4 The wording of the fresh determination below reflects the belief of the Commission that determinations which renew original determinations should contain updated terms and conditions consistent with the Commission's current practice. 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 IASC/DET/9503 allocating capacity on the Vietnam route to Qantas ([2000] IASC 104)

3.1 The Commission finds a renewal of the Determination IASC/DET/9503 allocating capacity to Qantas on the Vietnam route would be of benefit to the public.

3.2 The Commission makes a fresh determination in favour of Qantas, allocating the 3 B767 equivalent units per week in each direction on the Vietnam route.

3.3 The determination is for 5 years from 23 June 2000 and is subject to the following conditions:

- that Qantas is required to fully utilise the allocated capacity from 23 June 2000;
- only Qantas is permitted to utilise the capacity;
- the capacity may be used by Qantas (as marketing carrier) to provide joint services with Vietnam Airlines in accordance with:
 - the Code Share and Capacity Exchange Agreement between Qantas and Vietnam Airlines dated 16 January 1998 or as varied in terms of:
 - the services to be operated under Annex I; or
 - the number of seats in section 2 (Capacity Allocation) of Annex I of the Code Share and Capacity Exchange Agreement provided the capacity exchanged does not exceed 250 seats per week in each direction without the prior approval of the Commission; or
 - other respects with the prior approval of the Commission; or
 - any new joint services arrangements between Qantas and Vietnam Airlines for operations on the Australia-Vietnam route, whether or not it replaces the existing agreement, with the prior approval of the Commission;

and, in any case, in accordance with the determination;

- to the extent that the capacity is used to provide services jointly with Vietnam Airlines:
 - Qantas must price and sell its services on the route independently;
 - Qantas must not share or pool revenues under any such agreement; and
 - Qantas must take all reasonable steps to ensure that all 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-Vietnam Air Services Agreement 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 results in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia-Vietnam Air Services Agreement.

Dated: 21 February 2000

Michael Lawriwsky
Member

Stephen Lonergan
Member