



## RENEWAL DETERMINATION

**DETERMINATION NO:** [2003] IASC 108  
**RENEWAL OF:** DETERMINATION IASC/DET/9810  
**THE ROUTE:** SOUTH AFRICA  
**THE APPLICANT:** QANTAS AIRWAYS LIMITED  
(ACN 009 661 901) (QANTAS)  
**PUBLIC REGISTER FILE:** IASC/APP/200216

### 1 The application for renewal

1.1 On 18 May 1998, the Commission issued Determination IASC/DET/9810 (the Determination) allocating one frequency per week in each direction on the South Africa route. The Determination was subsequently varied to allow Qantas to code share with South African Airways until 30 June 2003.

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 expiry of the Determination. The Determination expires on 20 October 2003.

1.3 Qantas applied to the Commission for a renewal of the Determination. The Commission published a notice on 2 September 2002 inviting submissions about the application, and other applications for an allocation of the capacity subject to renewal. No submissions or other applications were received. Qantas has separately applied for a continuation of code sharing relevant to this and other determinations allocating capacity on the South Africa route.

1.4 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. 3), of 23 April 1997, as amended on 9 March 1999, 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,

- according to the Register of Available Capacity there is no capacity available for immediate allocation; and
- there is no evidence that Qantas has failed to service the route effectively.

2.3 In these circumstances, the Commission concludes that the renewal of Determination IASC/DET/9810 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.

### **3 Determination for renewal of Determination IASC/DET/9810 allocating capacity on the South Africa route to Qantas ([2003] IASC 108)**

3.1 The Commission makes a determination in favour of Qantas Airways Limited, allocating one frequency per week in each direction between Australia and South Africa.

3.2 The determination is for 5 years from 21 October 2003.

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;
- SAA is permitted to code share on Qantas flights operated to and from South Africa until 30 June 2005, 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 agreements in so far as they affect 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 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 2,680 seats per week on the South Africa route, although the Commission will allow temporary reductions from this level during periods of low seasonal demand or for unforeseen operational reasons, provided there is prior notification to the Commission;
  - Qantas and SAA withdraw from all IATA tariff coordination activities in relation to air fare levels between Australia and South Africa; and
  - Qantas must submit to the Commission reports each quarter on the number of code share seats 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 30 May 2003

Ross Jones  
Chairman

Michael Lawriwsky  
Member

Stephen Lonergan  
Member