



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2006] IASC 110
Renewal of: [2001] IASC 123
The Route: Thailand
The Applicant: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/200616

1 The application for renewal

1.1 On 13 December 2001, the Commission issued Determination [2001] IASC 123 (the Determination), allocating the equivalent of 13 B747 weekly services in each direction between Australia and Thailand.

1.2 The allocation was reduced to seven B747 weekly services by Decision [2002] IASC 213. The Determination was also amended to permit provision of joint services with Swiss International Airlines and Air Malta by Decision [2003] IASC 211 and Decision [2005] IASC 201 respectively.

1.3 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 2007.

1.4 Qantas applied to the Commission on 26 September 2006 for a renewal of the Determination, and advised that it no longer requires the ability to code share with Swiss International Airlines. The Commission published a notice on 3 October 2006 inviting other applications for an allocation of the capacity subject to renewal. No other applications were received.

1.5 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 *International Air Services Commission Act 1992* (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.

2.3 The delegate notes that:

- Qantas has been fully utilising the relevant capacity;
- according to the Register of Available Capacity, there are 23.8 B747 equivalent weekly services in each direction of capacity available;
- there are no other applicants seeking capacity on the route; and
- there is no evidence that Qantas has failed to service the route effectively;

2.4 In these circumstances, the delegate concludes that the renewal of Determination [2001] IASC 123 would be of benefit to the public.

2.5 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 [2001] IASC 123 allocating capacity on the Thailand route to Qantas ([2006] IASC 110)

3.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating the equivalent of seven B747 weekly services in each direction between Australia and Thailand under the Australia – Thailand air services arrangements.

3.2 The determination is for five years from 1 July 2007.

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;
- the capacity may be used by Qantas to provide services jointly with British Airways in accordance with:
 - the code share agreement dated 5 October 1997, as amended;
 - or any new code share agreement, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the arrangements with British Airways, Qantas may only price and market its services, or share or pool revenues/profits on the route, jointly with British Airways as long as such practices are authorised under the *Trade Practices Act 1974* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal;
- the capacity may be used by Qantas to provide services jointly with Finnair in accordance with:
 - the code share agreement dated 30 May 2000, as amended;
 - or any subsequent code share agreement between Qantas and Finnair for operations on the Australia - Thailand route with the prior approval of the Commission; and
- under any code share agreement with Finnair:
 - Qantas must price and sell its services on the route independently of Finnair;
 - Qantas must not share or pool revenues on the route with Finnair; and
- to the extent that the capacity is used to provide joint services on the route, Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- the capacity may be used by Qantas to provide services jointly with Air Malta in accordance with:
 - the code share agreement dated 1 March 2005, as amended;
 - or any subsequent code share agreement between Qantas and Air Malta for operations on the Australia - Thailand route with the prior approval of the Commission; and
- under any code share agreement with Air Malta:
 - Qantas must price and sell its services on the route independently of Air Malta; and

- Qantas must not share or pool revenues on the route with Air Malta;
- to the extent that the capacity is used to provide joint services on the route, Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- 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 - Thailand 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 - Thailand air services arrangements.

Dated: 26 October 2006

Michael Bird
Executive Director
Delegate of the IASC Commissioners