



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2016] IASC 108
Renewal of: [2011] IASC 119
The Route: France Route 1
The Applicant: Qantas Airways Ltd
(ABN 16 009 661 901)
Public Register File: IASC/APP/201626

The Commission's delegate makes a fresh determination allocating to Qantas 250 one-way seats of capacity per day on the France Route 1. The determination is valid for five years from 22 May 2017.

1 The application for renewal

1.1 On 19 December 2011, the delegate of the Commission issued Determination [2011] IASC 119 (the Determination) in favour of Qantas Airways Ltd (Qantas) allocating 250 one-way seats per day averaged over 12 months in each direction on France Route 1 between Australia and France. The Determination permits the use of the capacity for code share services with British Airways and Air France. On 8 March 2013, the Determination was amended to permit Emirates to code share with Qantas on the 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 21 May 2017. In view of this, the Commission sent, on 11 May 2016, a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination.

1.3 Qantas applied to the Commission on 16 June 2016 for a renewal of the Determination. As required by sections 12 and 17 of the Act, the Commission published a notice on its website and sent a notification by email to stakeholders inviting submissions about the application. No submissions were received.

1.4 All non-confidential material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

2 Relevant provisions of the air services arrangements

2.1 Under the Australia-France air services arrangements, the designated airline(s) of Australia may enter into arrangements with other airlines, including airlines of third countries, to undertake services through code share, blocked space or other joint venture arrangements.

2.2 The total traffic carried through such arrangements by the designated airline(s) will not exceed 400 one-way seats daily on a yearly basis. Currently, all 400 one-way seats of capacity entitlements have been allocated to Australian carriers (250 seats to Qantas and 150 seats to Virgin Australia).

3 Delegate's consideration

3.1 In accordance with section 27AB of the Act and regulation 3A of the International Air Services Commission Amendment Regulations 1992, the delegate of the Commission may consider Qantas' application. (For the purposes of this determination, all references to the Commission include the delegate of the Commission).

3.2 In considering an application for renewal of a determination under section 8 of the Act, 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.

3.3 Under paragraph 8 of the Minister's Policy Statement (No. 5) of 19 May 2004, there is a presumption in favour of the carrier seeking the renewal which may be rebutted only by the following criteria: (1) whether the carrier seeking renewal has failed to service the route effectively; and (2) whether the use of the capacity whole or in part by another Australian carrier that has applied for the capacity would better serve the public having regard to the criteria in paragraphs 4 and 5 of the Minister's Policy Statement.

3.4 The Commission's delegate has no information that Qantas is not servicing the route effectively. Qantas offers services on the route under code share arrangements with British Airways on the London-Toulouse route. It also markets services operated by Emirates between Dubai and the following points in France: Paris, Nice and Lyon¹.

3.5 The Commission's delegate also notes that no other applicants have sought capacity on the route.

3.6 In these circumstances, the delegate concludes that the renewal of Determination [2011] IASC 119 would be of benefit to the public.

3.7 On 4 July 2016, Qantas confirmed it will continue to use the capacity to provide services under code share arrangements with British Airways and Emirates. In light of this,

¹ Northern Summer 2016 International Airlines Timetable Summary (www.infrastructure.gov.au)

the delegate has decided to include conditions permitting the use of the capacity by Qantas for code share services with British Airways and Emirates.

4 Determination for renewal of Determination [2011] IASC 119 allocating capacity on France Route 1 to Qantas ([2016] IASC 108)

4.1 In accordance with section 8 of the Act, the delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating 250 one-way seats per day averaged over 12 months in each direction on France Route 1 under the Australia – France air services arrangements.

4.2 The determination is for five years from 22 May 2017.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity;
- only Qantas is permitted to utilise the capacity;
- Qantas is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- subject to the preceding condition, the capacity may be used by Qantas to provide code share services with British Airways in accordance with the code share agreement dated 19 November 2013;
- additionally, the capacity may be used by Qantas to provide code share services with Emirates in accordance with the code share agreement between Qantas and Emirates dated 21 January 2013;
- Qantas must apply to the Commission for approval of any proposed variations to the code share arrangements with British Airways and/or Emirates which would change the relevant commercial aspects of the arrangements (from a free sale to block space, or vice versa), or if Qantas proposes to add third country routes on which the airlines will code share which would require the use of Australian capacity entitlements;
- where the capacity is used to provide code share services on the route, nothing in this determination exempts Qantas 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 – France 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: 6 July 2016



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners