



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2016] IASC 109
Renewal of: [2011] IASC 125
The Route: Korea
The Applicant: Qantas Airways Ltd
(ABN 16 009 661 901)
Public Register File: IASC/APP/201630

The Commission's delegate makes a fresh determination allocating to Qantas Airways Ltd 500 seats of capacity per week in each direction on the Korea route. The determination is valid for five years from 1 July 2017.

1 The application for renewal

1.1 On 19 December 2011, the delegate of the Commission issued Determination [2011] IASC 125 (the Determination) allocating to Qantas Airways Ltd (Qantas) 500 seats per week in each direction between Australia and Korea. The Determination permits the use of the capacity to provide code share services with Asiana Airlines.

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 2017. In light of this, the Commission sent, on 6 June 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 28 June 2016 for a renewal of the Determination. In accordance with sections 12 and 17 of the Act, the Commission published a notice on its website and sent out email notifications 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-Korea air services arrangements, the designated airline(s) of each contracting party may operate unrestricted capacity, frequency and aircraft type to and from all points in Australia other than Sydney, Melbourne, Brisbane and Perth. To and from

Sydney, Melbourne, Brisbane and Perth, the Register of Available Capacity indicates there are currently 7,000 seats each way per week available for immediate allocation. Twelve months after the date on which the designated airline(s) fully utilise the capacity entitlements of 8,500 seats, the capacity entitlement for the airlines of both contracting parties will increase by a further 1,000 seats to a total of 9,500 seats each way per week.

2.2 The designated airline(s) of either contracting party may, subject to certain conditions, enter into cooperative marketing arrangements such as blocked space, code sharing or leasing arrangements, whether as the operating airline(s) or the marketing airline(s), in respect of passenger, combination and/or cargo air services with:

- a. the airline(s) of the same contracting party;
- b. airline(s) of the other contracting party; and
- c. airline(s) of any third country or countries.

2.3 The capacity offered by a designated airline, as the marketing airline, on services operated by other airlines, including airlines of third country or countries, shall be counted against any capacity entitlements of the contracting party designating the marketing airline.

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 2003 (No.1)*, the delegate of the Commission may consider the 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 rebuttable 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 in 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, as marketing carrier, services on the route operated by Asiana Airlines. On 13 July 2016, Qantas confirmed that it would continue to use the capacity to provide code share services with Asiana Airlines on the Korea route.

3.5 The delegate further notes that there are no other applicants seeking capacity on the route.

3.6 In these circumstances, the delegate concludes that the renewal of 500 seats per week in each direction between Australia and Korea would be of benefit to the public.

4 Determination for renewal of Determination [2011] IASC 125 allocating capacity on the Korea route to Qantas ([2016] IASC 109)

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 500 seats per week in each direction on the Korea route under the Australia – Korea air services arrangements.

4.2 The determination is for five years from 1 July 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, Qantas may use the capacity to provide code share services with Asiana Airlines in accordance with:
 - the Qantas – Asiana Codeshare Agreement of 15 November 1996 as extended from time to time in accordance with its terms, on the condition that there is no variation to the agreement resulting in the number of seats exchanged between Qantas and Asiana exceeding 500 per week in each direction; or
 - any new code share arrangement between Qantas and Asiana for operations on the Australia – Korea route whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the code share agreement with Asiana Airlines, Qantas must price and sell its services on routes independently of Asiana Airlines and Qantas must not share or pool revenues with Asiana Airlines unless authorised under the *Competition and Consumer Act 2010*;
- 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 – Korea 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: 14 July 2016



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners