



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

<b>Determination:</b>	[2015] IASC 105
<b>Renewal of:</b>	[2010] IASC 112
<b>The Route:</b>	France – Route 3 (New Caledonia)
<b>The Applicant:</b>	Qantas Airways Limited (ABN 16 009 661 901) (Qantas)
<b>Public Register File:</b>	IASC/APP/201509

**The Commission makes a fresh determination allocating 239 seats of capacity per week in each direction on the New Caledonia route. The determination is valid for five years from 21 May 2016.**

#### 1 The application for renewal

1.1 On 25 October 2010, the Commission issued Determination [2012] IASC 112 (the Determination) allocating in favour of Qantas 0.5 unit of capacity per week in each direction on the New Caledonia route. The Determination was subject to certain conditions including the permission for Qantas to provide services on the route jointly with Air Caledonie International in accordance with a code share agreement between the two airlines. The Determination was valid for five years from 21 May 2011.

1.2 On 9 February 2012, the Commission issued Resolution [2012] IASC R01 expressing the allocated capacity as number of seats rather than as number of units. The Determination was effectively varied to express the allocated capacity as 239 seats in each direction per week.

1.3 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 20 May 2016. In view of this, the Commission sent, on 21 May 2015, a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination.

1.4 Qantas applied to the Commission on 4 June 2015 for a renewal of the Determination for five years from 21 May 2016. Qantas also requested to replace the conditions concerning joint services with Air Caledonie with the following:

- Capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas; and

- Capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary and by any wholly-owned subsidiary of Qantas to provide joint services with Qantas.

1.5 As required by sections 12 and 17 of the Act, the Commission published a notice on 5 June 2015 inviting other applications for the capacity. No applications were received.

1.6 All material supplied by the applicant is available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

## 2 Commission's consideration

2.1 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.

2.2 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), in circumstances where there is only one applicant for allocation of capacity on a route, only the criteria in paragraph 4 are applicable. Paragraph 4 provides that the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and are not reasonably capable of implementing their applications.

2.3 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- Qantas is an established international carrier and is therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

2.4 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal.

2.5 Qantas operates one weekly service between Brisbane and Noumea and three weekly services between Sydney and Noumea<sup>1</sup>. Qantas' market share on the Australia-New Caledonia route is nearly 31 per cent while the biggest share is still held by Air Caledonie International (Aircalin) with over 59 per cent as per aviation data from January to December 2014.<sup>2</sup> The continued operation therefore of air services by Qantas on the route is of benefit to the public. In any case, should another Australian carrier

<sup>1</sup> Northern Summer 2015 International Airlines Timetable Summary

<sup>2</sup> Source: Bureau of Infrastructure, Transport and Regional Economics (BITRE)

wish to seek allocation of capacity on the route, there are 1,612 seats of capacity still available for allocation<sup>3</sup>.

2.6 In light of the above, the Commission is satisfied that renewal of Determination [2010] IASC 112 would be of benefit to the public.

### **3 Determination for Renewal of Determination [2010] IASC 112 allocating capacity on the New Caledonia route to Qantas ([2015] IASC 105)**

3.1 In accordance with section 8 of the Act, the Commission makes a determination in favour of Qantas, allocating 239 seats per week in each direction on the New Caledonia route under the Australia - New Caledonia air services arrangements.

3.2 The determination is for five years from 21 May 2016.

3.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from the date of issue of this instrument;
- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- 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;
- the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary of the Qantas Group and by any wholly owned subsidiary of the Qantas Group to provide joint services with Qantas;
- to the extent that the capacity is used to provide joint services on the route, Qantas and any wholly-owned subsidiary of Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of the booking. Nothing in this determination exempts Qantas and any wholly owned subsidiary from complying with the Australian Consumer Law; and
- changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:

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<sup>3</sup> Source: Register of Available Capacity published by the Department of Infrastructure and Regional Development

- results in the designation of the airline as an Australian carrier under the Australia – New Caledonia 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: 24 June 2015



JOHN KING  
Presiding Commissioner



IAN DOUGLAS  
Commissioner