



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2015] IASC 106
Renewal of: [2011] IASC 106
The Route: Taiwan
The Applicant: Qantas Airways Ltd
(ABN 16 009 661 901) (Qantas)
Public Register File: IASC/APP/201508

The Commission's delegate makes a fresh determination allocating to Qantas 1,260 seats of passenger capacity per week on the Taiwan route in accordance with the Australia-Taiwan air services arrangements.

1 The application for renewal

1.1 On 6 June 2011, the Commission issued Determination [2011] IASC 106 (the Determination), allocating to Qantas 2,121 seats of capacity per week in each direction on the Taiwan route. The Determination allows the capacity to be used by Qantas to provide services jointly with Jetstar Asia.

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 6 June 2016. In view of this, the Commission sent, on 4 June 2015, a letter to Qantas inviting it to apply to the Commission if it wished to renew the Determination. On 18 June 2015, Qantas applied to renew 1,260 seats of capacity per week and hand back 861 seats of capacity with effect from 7 June 2016. Qantas also sought the inclusion of the following additions to the existing conditions in the Determination:

- 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.

1.3 In accordance with sections 12 and 17 of the Act, the Commission published a notice on 19 June 2015 inviting other applications about the application. No other applications were received.

1.4 All 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 air services arrangements between Australia and Taiwan, there is unrestricted frequency, capacity and aircraft type for services to and from all points in Australia other than Brisbane, Sydney, Melbourne and Perth.

2.2 For services to and from Brisbane, Sydney, Melbourne and Perth, the Register of Available Capacity indicates there are 3,879 seats per week in each direction available for immediate allocation.

2.3 The air services arrangements also authorise airlines of each side to perform any of their agreed services with code sharing, including blocked space and other cooperative arrangements, with an airline or airlines of the same side, of the other side, or of a third country. When an Australian carrier code shares with a third country airline, the code share capacity is counted against Australian capacity entitlements.

3 Delegate's assessment

3.1 In accordance with section 27AB of the Act and regulation 3A of the International Air Services Commission 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 this case, however, Qantas is handing back 861 seats and wishes to retain 1,260 seats for a further five years from 7 June 2016.

3.3 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.

3.4 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 an 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.

3.5 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.

3.6 The Commission notes that in previous seasons, Qantas was utilising its capacity allocation through its code share arrangements with Jetstar Asia on the Singapore-Taipei route. The Commission notes further that at the time of application for renewal, the capacity

is not being fully utilised. However, Qantas provided, on a confidential basis, information on its plans to utilise 1,260 seats of capacity on the Taiwan route.

3.7 Consistent with the requirements of the Act and the Minister's Policy Statement that the airline should utilise the allocated capacity except so far as the determination provides for a specific timeframe of use, the Commission has decided to include a condition requiring Qantas to fully use the capacity from no later than 7 December 2016 or such other date approved by the Commission.

4 Determination for renewal of capacity allocation on the Taiwan route to Qantas ([2015] IASC 106)

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 1,260 seats per week of passenger capacity in each direction on the Taiwan route under the Australia – Taiwan air services arrangements.

4.2 The determination is for five years from 7 June 2016.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 7 December 2016 or such other date approved by the Commission;
- the capacity may be utilised by Qantas or another Australian carrier which is a wholly owned subsidiary of Qantas;
- neither Qantas nor another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person unless approved by the Commission;
- subject to the preceding condition, the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary of Qantas and by any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas;
- additionally, the capacity may be used by Qantas to provide services jointly with Jetstar Asia in accordance with the code share agreement between Qantas and Jetstar Asia dated 25 March 2011, as amended on 9 September 2013;
- Qantas must apply to the Commission for approval if it proposes to add third country routes on the code share arrangement with Jetstar Asia in which Australian capacity entitlements would be utilised;
- to the extent that the capacity is used to provide joint services on the route, the airlines must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking. Nothing in this determination exempts the airlines 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:
 - results in the designation of the airline as an Australian carrier under the Australia – Taiwan 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 2015



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners