



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

**Determination:** [2016] IASC 101  
**Renewal of:** [2010] IASC 113  
**The Route:** France – Route 3 (New Caledonia)  
**The Applicant:** Qantas Airways Limited  
(ABN 16 009 661 901) (Qantas)  
**Public Register File:** IASC/APP/201533

**The Commission makes a fresh determination allocating to Qantas 149 seats of capacity per week on the New Caledonia route. The determination is valid for five years from 13 December 2016.**

#### 1 The application for renewal

1.1 On 25 October 2010, the Commission issued Determination [2010] IASC 113 (the Determination) allocating in favour of Qantas 0.25 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 (Aircalin) in accordance with a code share agreement between the two airlines. The Determination was valid for five years from 13 December 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 149 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 12 December 2016. In view of this, the Commission sent, on 2 December 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 10 December 2015 for a renewal of the Determination for five years from 13 December 2016 and sought to make changes to the conditions in the original determination to include the following:

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

- the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary and by any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas; and
- the capacity may be used by Qantas to provide services jointly with Aircalin in accordance with the code share agreement dated 4 June 2004.

1.5 As required by sections 12 and 17 of the Act, the Commission published a notice on 10 December 2015 inviting other applications for the capacity. No applications were received.

1.6 In subsequent communications between the Commission and Qantas, it was confirmed that Jetstar Airways Pty Limited (Jetstar) will be the wholly-owned subsidiary proposed to utilise the capacity (in addition to Qantas to whom the capacity is allocated).

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

## **2 Relevant provisions of the air services arrangements**

2.1 Australia and New Caledonia entered into a Memorandum of Understanding (MOU) in November 2011 pursuant to the Agreement between Australia and France relating to Air Transport signed on 13 April 1965. These arrangements allow for the operation of international air services between Australia and France Route 3/ Air Caledonia and the multiple designation of Australian carriers. Further, under these arrangements, the designated airlines of each party are able to, over all or any part of their respective routes, enter into code share, blocked space, or other cooperative marketing arrangements, as either the operating or the marketing airline, with any other airline or airlines (with the exception of third country airlines) including airlines of the same party.

2.2 According to the Register of Available Capacity, there are currently 1,612 seats of capacity per week in each direction available for allocation to Australian carriers for passenger services between Australia and New Caledonia.

## **3 Commission's consideration**

3.1 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.

3.2 Under paragraph 8 of the Minister's Policy Statement (No. 5) of 19 May 2004

(the Policy Statement), there is a presumption in favour of the carrier seeking a renewal which may be rebutted, after the start-up phase on the route, by the following criteria:

- Whether the carrier seeking renewal has failed to service the route effectively;
- Whether 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 set out in paragraphs 4 and 5.

3.3 The Commission has no information that Qantas has not serviced the route effectively and notes that no other Australian carrier has applied for capacity on the route. In light of this, the Commission has decided it would allocate 149 seats of passenger capacity in each direction per week on the New Caledonia route in favour of Qantas.

3.4 Qantas also applied to include a condition permitting the use of the capacity by another Australian carrier which is a wholly-owned subsidiary of Qantas which in this case is Jetstar Airways Pty Limited (Jetstar). While no Qantas' wholly-owned subsidiary is currently operating services on the route, Qantas states that the inclusion of the condition will provide flexibility in the use of the capacity for future operations. This effectively seeks a variation of the original determination to allow another Australian carrier to utilise the capacity.

3.5 Under paragraphs 6.2 and 6.4 of 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.

3.6 The Commission notes that:

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

3.7 Qantas also seeks to retain the authorisation to permit the use of the capacity under code share arrangements with Aircalin and to allow the capacity to be used by Qantas to provide joint services with any wholly-owned subsidiary and by any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas.

3.8 The Commission notes that Qantas operates one weekly service between Brisbane and Noumea and three weekly services between Sydney and Noumea<sup>1</sup>. Qantas and Aircalin code share on each other's services on both the Brisbane-Noumea and Sydney-Noumea routes. Qantas' market share on the Australia-New Caledonia

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<sup>1</sup> Northern Winter 2015-16 International Airlines Timetable Summary

route is nearly 27 per cent while the biggest share is still held by Airalin with nearly 63 per cent as per aviation data from November 2014 to October 2015.<sup>2</sup>

3.9 Under paragraph 3.6 of the Policy Statement, where capacity that can be used for code share operations is available under air services arrangements including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise the application for use of the capacity to code share. However, if the Commission has serious concerns that a code share application may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission (the ACCC).

3.10 The Commission has no serious concerns about the proposed continuation of the code share arrangements between Qantas and Airalin on the route and the proposed joint services between Qantas and a wholly-owned subsidiary of the Qantas Group. For this reason, the Commission did not consult the ACCC and did not see the need to apply the paragraph 5 criteria.

3.11 The Commission is satisfied that renewal of Determination [2010] IASC 113 would be of benefit to the public subject to the terms and conditions set out below.

#### **4 Determination for renewal of Determination [2010] IASC 113 allocating capacity on the New Caledonia route to Qantas ([2016] IASC 101)**

4.1 In accordance with section 8 of the Act, the Commission makes a determination in favour of Qantas, allocating 149 seats per week in each direction on the New Caledonia route under the Australia - New Caledonia air services arrangements.

4.2 The determination is valid for five years from 13 December 2016.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from the date the determination comes into effect;
- 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;

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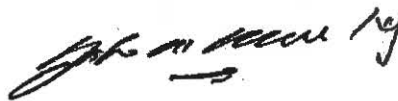
<sup>2</sup> Source: Bureau of Infrastructure, Transport and Regional Economics (BITRE)

- subject to the preceding condition, 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;
- additionally, the capacity may be used by Qantas to provide code share services with Aircalin in accordance with the code share agreement dated 4 June 2004, as amended, between Qantas and Aircalin;
- Qantas must apply to the Commission for approval of any proposed variations to the code share arrangement which would change the relevant commercial aspects of the respective code share arrangements from a free sale code share arrangement to a block space, or vice versa, or if Qantas proposes to add third country routes on which the airlines will code share where Australian capacity entitlements will be used for services on that route;
- to the extent that the capacity is used to provide joint or code share 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 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 the airlines authorised to use the capacity are permitted except to the extent that any change:
  - 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: 4 March 2016



IAN DOUGLAS  
Acting Chairperson



JOHN KING  
Commissioner