



**Australian Government**  
**International Air Services Commission**

**RENEWAL DETERMINATION**

**Determination:** [2017] IASC 130  
**Renewal of:** [2013] IASC 115  
**The Route:** Indonesia  
**The Applicant:** Qantas Airways Limited (Qantas)  
(ABN 16 009 661 901)  
**Public Register File:** IASC/APP/201760

**The Commission makes a fresh determination allocating 14,468 seats per week for the exercise of third and fourth freedom rights on the Indonesia route and 2,148 seats for the exercise of beyond traffic rights with 12 frequencies per week, seven of which may be used beyond Indonesia from Denpasar. The new determination is valid for five years from 25 October 2018.**

**1 The application for renewal**

1.1 On 8 March 2013, the Commission's delegate issued Determination [2013] IASC 115 (the Determination) valid for five years from 25 October 2013. The original Determination allocates in favour of Qantas 1,226 seats per week in each direction and, for the exercise of beyond traffic rights, allocates 369 seats with two frequencies neither of which may serve points beyond Indonesia from Denpasar. The Determination was subsequently varied by Decision [2014] IASC 201 effectively consolidating Qantas' multiple determinations on the Indonesia route. The consolidated Determination allocates 14,468 seats per week for the exercise of third and fourth freedom rights and 2,148 seats for the exercise of beyond traffic rights with 12 frequencies per week, seven of which may be used beyond Indonesia from Denpasar. The Determination was also varied by Decision [2014] IASC 223 to permit the use of the capacity for code share services between Jetstar Airways Pty Ltd and Emirates on the route.

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 is due to expire on 24 October 2018. In view of this, the Commission sent, on 16 October 2017, 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 8 November 2017 for a renewal of the Determination for a further five-year period from 25 October 2018. Additionally, Qantas requested for the retention of the existing conditions in the Determination, as amended.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 8 November 2017 inviting other applications for the capacity. No competing applications

were received. (It is noted that Virgin Australia has a concurrent application for renewal of two determinations on the Indonesia route.)

1.5 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 Paragraph 7(2)(aa) of the Act requires the Commission not to allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 The Australia – Indonesia air services arrangements allow multiple designation of Australian airlines to operate on the Indonesia route. The Register of Available Capacity indicates there are 3,092 seats of capacity available for immediate allocation to and from Sydney, Melbourne (including Avalon), Brisbane and Perth on this route.

2.3 A designated airline of Australia may enter into code-share, blocked space or other cooperative marketing arrangements, as the marketing and/or operating carrier with another Australian airline(s), with an Indonesian airline(s), or with an airline(s) of a third country.

## **3 Commission's assessment**

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 Pursuant to section 11 of the Act, the Minister issued Policy Statement No. 5 dated 19 May 2004 (the Policy Statement). The Policy Statement sets out the range of criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.3 Under paragraph 6.2 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 effectively 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.

3.4 The Commission notes that there are no other applicants contesting the capacity allocation sought to be renewed by Qantas. The Commission further notes that Qantas and its wholly-owned subsidiary, Jetstar, are established international carriers and are therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their proposed services.

3.5 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal which may be rebutted only in the following circumstances: (1) that the carrier seeking renewal has failed to service the route effectively; and (2) that 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 Policy Statement.

3.6 The Commission has no information that Qantas or Jetstar has failed to service the route effectively or that another carrier is interested to apply for the capacity sought to be renewed.

3.7 The Commission notes that the Qantas Group offers the largest number of seats on the Indonesia route, with Jetstar operating direct services of up to 60 weekly frequencies while Qantas operates up to 12 weekly frequencies. Jetstar also operates services to Singapore from Perth via Denpasar and vice-versa. Virgin Australia operates up to 20 direct services a week while Garuda Indonesia operates up to 35 weekly frequencies. Batik Air which commenced services in June this year between Denpasar and Perth operates up to 14 frequencies a week. Various third country airlines code share on the services operated by the Australian and Indonesian carriers.<sup>1</sup>

3.8 In relation to Qantas' request to include in the new determination a condition permitting the capacity to be used for joint services between Jetstar and Emirates, the Commission notes that the alliance between the Qantas Group (including its subsidiaries) and Emirates was previously authorised by the Australian Competition and Consumer Commission (ACCC). The Commission has no serious concerns about the continuation of the code share arrangements. For this reason, it did not specifically consult the ACCC as required under paragraph 3.6 of the Policy Statement and did not consider it necessary to apply the additional criteria under paragraph 5 of the Policy Statement.

3.9 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Paragraph 15(2)(e) requires the inclusion of a condition stating the extent to which the carrier may use that capacity in joint services with another carrier.

3.10 Nothing in this decision should be taken as indicating either approval or disapproval by the ACCC. This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

#### **4 Determination for renewal of Determination [2013] IASC 115 allocating capacity on the Indonesia route to Qantas ([2017] IASC 130)**

4.1 Pursuant to section 8 of the Act, the Commission makes a determination in favour of Qantas allocating in accordance with the Australia-Indonesia air services arrangements:

- 14,468 seats per week for the exercise of third and fourth freedom rights and
- 2,148 seats for the exercise of beyond traffic rights with 12 frequencies per week, seven of which may be used beyond Indonesia from Denpasar.

4.2 The determination is for five years from 25 October 2018.


4.3 The determination is subject to the following conditions:


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<sup>1</sup> 2017 Northern Summer International Airlines Timetable Summary.

- Qantas is required to fully utilise the capacity from no later than 30 December 2018 or such other date approved by the Commission.
- Only Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas is permitted to utilise the capacity.
- The 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.
- Neither Qantas nor the wholly-owned subsidiary is permitted to utilise the capacity under code share or joint services with another carrier or any other person without the approval of the Commission.
- Subject to the preceding condition, the capacity may be utilised by Jetstar to provide joint services with Emirates in accordance with the code share agreement between the airlines with effect from 11 February 2014, as amended.
- Qantas or Jetstar must apply to the Commission for approval of the use of the capacity if there are variations to the code share arrangement which would change the relevant commercial aspects of the code share arrangement from a free sale code share arrangement to a block space, or vice versa, or if Qantas/ Jetstar proposes to add third country routes on which the airlines will code share where Australian capacity will be used for services on that route.
- To the extent that the capacity is used to provide code share (or joint) services on the route, the airlines must take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight. Nothing in this determination exempts the airlines from complying with the Australian Consumer Law.
- Changes in relation to the ownership and control of Qantas and/or the wholly-owned subsidiary are permitted except to the extent that any change:
  - results in the designation of Qantas and/or the wholly-owned subsidiary as an Australian carrier under the Australia – Indonesia 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 and/or the wholly-owned subsidiary without the prior consent of the Commission.

Dated: 7 December 2017

  
 IAN DOUGLAS  
 Chairperson

  
 JAN HARRIS  
 Commissioner

  
 KAREN GOSLING  
 Commissioner