



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2018] IASC 121
Renewal of:	[2014] IASC 113
The Route:	Canada
The Applicant:	Qantas Airways Limited (Qantas) ABN 16 009 661 901
Public Register:	IASC/APP/201856

The Commission makes a fresh determination allocating to Qantas 1,092 seats of capacity per week in each direction on the Canada route. Qantas and its wholly-owned subsidiary Jetstar are permitted to utilise the capacity. The capacity may be used for code sharing between Qantas and American Airlines, WestJet Airlines and Alaska Airlines. The determination is valid for five years from 25 September 2019.

1 The application

1.1 On 25 September 2014, the International Air Services Commission (the Commission) issued Determination [2014] IASC 113 (the Determination) allocating 1,092 seats per week of capacity in favour of Qantas on the Canada route. The Determination permits the capacity to be used by either Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas. The Determination was varied to permit American Airlines¹, WestJet Airlines² and Alaska Airlines³ to code share on Qantas-operated services between Australia and Canada.

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 24 September 2019. In view of this, the Commission sent, on 5 September 2018, a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination. Qantas subsequently applied on 29 October 2018 for a renewal of the Determination for a further period of five years from 25 September 2019. Additionally, Qantas requested to retain the existing conditions including the authorisation for another Australian carrier which is a wholly-owned subsidiary of Qantas to be permitted to use the capacity, which in this case is Jetstar Airways Pty Ltd (Jetstar), and for the permission to use the capacity for code sharing with American Airlines, WestJet Airlines and Alaska Airlines.

¹ Decision [2015] IASC 214

² Decision [2018] IASC 238

³ Decision [2018] IASC 240

1.3 As required by sections 12 and 17 of the Act, the Commission published a notice on 31 October 2018 inviting other applications for capacity. No applications were received. 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 Paragraph 7(2)(aa) of the Act provides that the Commission must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s). Any variation made to an existing allocation of capacity should also not be contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 The Australia - Canada air services arrangements allow for multiple designation of airlines and provide for capacity entitlements of up to 9,000 seats per week in each direction for the operation of own aircraft passenger (or combination of passenger and freight) services to and from Sydney, Melbourne (including Avalon), Brisbane and Perth. According to the Register of Available Capacity, there are 7,908 seats per week in each direction to/from Sydney, Melbourne (including Avalon), Brisbane and Perth available for immediate allocation.

2.3 Additionally, designated airline(s) of Australia may enter into cooperative arrangements for the purpose of code sharing on flights operated by airline(s) of Australia or Canada and/or of any third country.

3 Commission's consideration

3.1 Section 8 of the Act provides that the Commission may, at any time while a determination is in force, make a fresh determination allocating the capacity to which the original determination relates. The fresh determination 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 On 20 March 2018, the Hon. Michael McCormack MP, Deputy Prime Minister and Minister for Infrastructure and Transport, issued, in accordance with section 11 of the Act, the International Air Services Commission Policy Statement 2018 (the Policy Statement), which came into effect on 28 March 2018.

3.3 Under Division 3 of Part 3 of the Policy Statement, the Commission is to have regard to the 'reasonable capability criterion' in section 8 and the additional criteria in section 9, when circumstances so warrant. Section 7 of the Policy Statement explains this.

3.4 Under section 14 of the Policy Statement, there is a presumption in favour of the carrier seeking a renewal which may be rebutted only if the carrier has failed to service the route effectively; and there are other applications for some or all of the capacity; and the Commission is satisfied that a different allocation of capacity would be of greater benefit to the public, having regard to the criteria set out in sections 8 and 9 of the Policy Statement.

3.5 The Commission notes that there are no other applicants seeking capacity on the route and there is no information to suggest that Qantas has failed to service the route effectively. For this reason, the Commission decided to only apply the reasonable capability criterion under section 8 of the Policy Statement and did not consider it necessary to assess the application against the additional criteria in section 9 of the Policy Statement.

3.6 The Commission notes that Qantas and its wholly-owned subsidiary, Jetstar, are established carriers operating scheduled international services on various routes and finds that the carriers are reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated on the Canada route. Qantas operates up to three weekly services between Sydney and Vancouver.⁴ American Airlines code shares, as marketing carrier, on the Qantas-operated services. In light of this, the Commission is satisfied that renewing the capacity allocation in favour of Qantas and permitting the capacity to be used by either Qantas or Jetstar would be of benefit to the public.

3.7 In relation to the continuation of the code share arrangement with American Airlines, the Commission notes that the Australian Competition and Consumer Commission (the ACCC) re-granted authorisation until 18 March 2021 for Qantas and American Airlines to continue their trans-Pacific alliance under a joint business agreement. The ACCC considered that the alliance would likely result in material public benefits in the form of enhanced products and services including new frequencies and destinations, increased and better online connections, better scheduling, greater loyalty program benefits and improved lounge access. A significant factor that underpinned the ACCC's decision was their view that absent the alliance, American Airlines would have been unlikely to operate trans-Pacific services in its own right.⁵ In light of this, the Commission did not have concerns that the continued use of the capacity for code sharing between Qantas and American Airlines would not be of benefit to the public.

3.8 In relation to the continued permission for WestJet and Alaska Airlines to code share with Qantas on the route, the Commission notes that Qantas code shares, as marketing carrier, on various flights operated by WestJet and Alaska Airlines between Canada and the USA. The Commission considers that allowing these airlines to code share on Qantas-operated services between Australia and Canada will add to the number of carriers that market services on the route and is unlikely to have a detrimental impact on competition.

3.9 Section 15 of the Act provides that the Commission may include such terms and conditions as the Commission thinks fit. Subsection 19(3) of the Act provides that, in including terms and conditions in the fresh determination, the Commission may make such changes to the terms and conditions included in the original determination sought to be renewed, including adding or deleting terms and conditions, where warranted by changes in circumstances since the original determination was made. The wording of the fresh determination below reflects the view of the Commission that determinations which renew original determinations should contain updated terms and conditions consistent with the

⁴ Northern Winter 2018 scheduling period (28 October 2018 – 30 March 2019)

⁵ ACCC Determination dated 25 February 2016, Authorisation Numbers A91502 and A91503

legislative requirements and current air services arrangements.

4 Determination for renewal of [2014] IASC 113 allocating capacity on the Canada route to Qantas ([2018] IASC 121)

4.1 Pursuant to section 8 of the Act, the Commission allocates to Qantas 1,092 seats per week of capacity in each direction on the Canada route, in accordance with the terms of the Australia – Canada air services arrangements.

4.2 The determination is valid for five years from 25 September 2019.

4.3 The determination is subject to the following conditions:

- The capacity may be utilised by:
 - Qantas; or
 - Jetstar Airways Pty Ltd, as long as it remains a wholly-owned subsidiary of Qantas or
 - such other wholly-owned subsidiary of Qantas that the Commission approves in writing, as long as it remains a wholly-owned subsidiary of Qantas.
- Qantas or its wholly-owned subsidiary is required to fully utilise the capacity by no later than 31 December 2019 or such other date as may be approved by the Commission.
- Qantas is not permitted to utilise the capacity to provide code share or joint services with another carrier or any other person unless approved by the Commission.
- 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.
- The capacity may be used by Qantas to provide code share services with American Airlines in accordance with the code share agreement between the airlines made on 23 September 2004, as amended from time to time.
- The capacity may be used by Qantas to provide code share services with WestJet Airlines in accordance with the code share agreement between the airlines made on 4 September 2014, as amended from time to time.
- The capacity may be used by Qantas to provide code share services with Alaska Airlines in accordance with the code share agreement between the airlines dated 24 December 2005, as amended from time to time.
- Qantas must apply to the Commission for approval of the use of the capacity if there are variations to the code share arrangement(s) permitted in this determination which would change the relevant commercial aspects of the

code share arrangement(s) 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 will be used for services on that route.

- To the extent that the capacity is used to provide code share or joint services, 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.
- Changes in relation to the ownership and control of Qantas and its wholly-owned subsidiary 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 – Canada 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 the wholly-owned subsidiary or be in a position to exercise effective control of Qantas or the wholly-owned subsidiary, without the prior consent of the Commission.

Dated: 11 December 2018



IAN DOUGLAS
Chairperson



JAN HARRIS
Commissioner



KAREN GOSLING
Commissioner