



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2016] IASC 111
Renewal of: [2011] IASC 130
The Route: Fiji
The Applicant: Qantas Airways Limited
(ABN 16 009 661 901) (Qantas)
Public Register File: IASC/APP/201640

The Commission makes a fresh determination allocating to Qantas 852 seats of capacity per week on the Fiji route. The determination permits the capacity to be utilised: (1) by Qantas and another Australian carrier which is a wholly-owned subsidiary of Qantas; and (2) for code share services between Qantas and its wholly-owned subsidiary. The determination is valid for five years from 5 November 2017.

1 The application for renewal

1.1 On 19 December 2011, the International Air Services Commission (the Commission) issued Determination [2011] IASC 130 (the Determination) allocating in favour of Qantas 852 seats of capacity per week in each direction on the Fiji route. The Determination was subject to certain conditions including the permission for Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas to use the capacity and for joint services between Qantas and its wholly-owned subsidiary. The Determination was valid for five years from 5 November 2012.

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 4 November 2017. In view of this, the Commission sent, on 8 November 2016, 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 22 November 2016 for a renewal of the Determination for five years from 5 November 2017 and sought to retain the existing conditions in the original determination.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 22 November 2016 inviting other applications for the capacity. No applications were received.

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

1.6 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 According to the Register of Available Capacity, there is only one seat per week of capacity to and from Sydney, Melbourne, Brisbane and/or Perth available for allocation to Australian carriers. Australian-designated airlines may determine the frequency of service, capacity and aircraft type to be operated on the specified routes to or from points in Australia other than Sydney, Melbourne, Brisbane and/or Perth.

2.2 When operating or holding the agreed services on the specified routes, any Australian designated airline may enter into cooperative marketing arrangements such as blocked space, code sharing or leasing, whether as the operating or marketing airline, with an Australian designated airline (s) or a Fijian designated airline(s). On the specified Joint Services Route, Australian designated airline(s) may enter into code sharing, blocked space and/or any other cooperative services arrangement with an airline or airlines of Fiji or with an airline of the Association of South Pacific Airlines as at 9 March 1998.

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 paragraphs 6.2 of the Policy Statement, in circumstances where there is only one applicant for allocation of capacity on a route (as in this case), 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.

3.3 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.

3.4 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; and
- 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.

3.5 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 852 seats of passenger capacity in each direction per week on the Fiji route in favour of Qantas.

3.6 In its application, Qantas also sought to retain the 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). According to the Northern Winter 2016/2017 Timetable Summary published by the Department of Infrastructure and Regional Development, Jetstar will operate a total of seven weekly services between Australia and Fiji -- three between the Gold Coast and Nadi and four between Sydney and Nadi – during the northern winter 2016-2017 International Air Transport Association (IATA) scheduling period¹.

3.7 The Commission is satisfied that the renewal of 852 seats per week in each direction in favour of Qantas for the use of either Qantas or its wholly-owned subsidiary would be of benefit to the public. The Commission is also satisfied that the provision of joint services by Qantas on the route with a Qantas wholly-owned subsidiary would not impact on competition on the route.

4 Determination for renewal of Determination [2011] IASC 130 allocating capacity on the Fiji route to Qantas ([2016] IASC 111)

4.1 In accordance with section 8 of the Act, the Commission makes a determination in favour of Qantas, allocating 852 seats per week in each direction on the Fiji route under the Australia - Fiji air services arrangements.

4.2 The determination is valid for five years from 5 November 2017.

4.3 The determination is subject to the following conditions:

¹<https://infrastructure.gov.au/aviation/international/timetable.aspx>

- the allocation is required to be fully utilised from the date the determination comes into effect or from 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 Qantas to provide joint services with Qantas;
- 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(s) as an Australian carrier under the Australia – Fiji 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: 19 December 2016



IAN DOUGLAS
Chairperson



JOHN KING
Commissioner



IAN HARRIS
Commissioner