



## **Australian Government**

### **International Air Services Commission**

#### **RENEWAL DETERMINATION**

<b>Determination:</b>	<b>[2023] IASC 133</b>
<b>Renewal of:</b>	<b>[2018] IASC 121</b>
<b>The Route:</b>	<b>Canada</b>
<b>The Applicant:</b>	<b>Qantas Airways Limited (Qantas) (ABN 16 009 661 901)</b>
<b>Public Register File:</b>	<b>IASC/APP/202364</b>

**The Commission makes a fresh determination allocating to Qantas Airways Limited 708 seats of capacity per week on the Canada route. The Determination permits Qantas Airways Limited to offer code share services with American Airlines, WestJet Airlines and Alaska Airlines. The determination is valid for 5 years from 25 September 2024.**

#### **The application for renewal**

1.1 On 11 December 2018, the International Air Services Commission (the Commission) issued Renewal Determination [2018] IASC 121 (the Determination) renewing the allocation of 1,092 seats of passenger capacity on the Canada route in favour of Qantas.

1.2 The Determination permits Qantas and its wholly-owned subsidiary Jetstar Airways Pty Limited (Jetstar) to utilise the capacity. The capacity may also be used by Qantas to provide code share services with American Airlines, WestJet Airlines and Alaska Airlines.

1.3 Section 17 of the International Air Services Commission Act 1992 (the Act) requires the Commission to start its consideration of the renewal of a determination at least 12 months before the expiry of the original determination. The Determination is due to expire on 24 September 2024. In view of this, the Commission sent, on 25 September 2023, a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination.

1.4 On 19 October 2023, Qantas applied to the Commission to renew the Determination for a further five-year period and requested the retention of all existing conditions, with the exception of the condition that permits the capacity to be utilised by Jetstar. Qantas also requested that the allocation of the capacity be varied from 1,092 seats to 708 seats per week to reflect the use of the Boeing 787-9 Dreamliner, which replaced the Boeing 747 aircraft on the route.

1.5 In accordance with sections 12 and 17 of the Act, the Commission published, on 23 October 2023, a notice on its website and subsequently sent a notification by email to

stakeholders inviting other applications for capacity on the route. No other applications were received.

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

## **2 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 Under the Australia-Canada air services arrangements, Australian designated carriers may operate up to 9,000 seats of passenger capacity per week in each direction to/from: Sydney, Melbourne (including Avalon), Brisbane and Perth, and unrestricted capacity to/from all other points in Australia.

2.3 Designated airline(s) may exercise full fifth freedom traffic rights at the following intermediate points: Honolulu, Fiji, Tahiti, San Francisco and a point to be agreed.

2.4 According to the Register of Available Capacity, there are 7,908 seats per week available for allocation to and from any of the four major cities (Sydney, Melbourne (including Avalon), Brisbane and/or Perth).

2.5 Under the Australia-Canada air services arrangements, Australian designated carriers 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. Subsection 8(2) provides in part that 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 Pursuant to section 11 of the Act, the Minister issued the International Air Services Commission Policy Statement 2018 (the Policy Statement), which came into effect on 28 March 2018.

3.3 Section 14 of the Policy Statement applies where the Commission is proposing to make a fresh determination under section 8 of the Act, and is considering whether the allocation of capacity in the original determination is no longer of benefit to the public for the purpose of section 8(2)(a)(i) of the Act. Section 14(2) of the Policy Statement

provides that, without limiting the matters to which the Commission may have regard, an allocation is generally no longer of benefit to the public if:

- the carrier has failed to service the route effectively (s 14(2)(a)); and
- there are other applications for some or all of the capacity (s 14(2)(b)); 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 (s 14(2)(c)).

3.4 The Commission notes that, under subsection 14(2) of the Policy Statement, an allocation will generally no longer be of benefit to the public where all of the above conditions are satisfied.

3.5 There are no other applications for some or all of the capacity to which the determination in question relates, and therefore the condition in section 14(2)(b) of the Policy Statement is not satisfied. The Commission therefore finds that the proposed allocation does not fall within the class of allocations that are generally no longer of benefit to the public contemplated by subsection 14(2) of the Policy Statement.

3.6 However, subsection 14(2) of the Policy Statement operates ‘without limiting the matters to which the Commission may have regard’. In view of the circumstances pertaining to the COVID-19 pandemic, the Commission has proceeded to consider whether the allocation is no longer of benefit to the public in all the circumstances.

3.7 On 11 March 2020, the World Health Organization declared the outbreak of COVID-19 a pandemic. In response, the Australian Government introduced a range of health, financial and other measures to prevent and minimise the transmission of COVID-19.

3.8 In this context, on 24 March 2020 the Prime Minister announced that the Australian Government was introducing a ‘do not travel’ ban on Australians travelling overseas under the Biosecurity Act 2015. On 27 October 2021, the Government announced it would lift the international travel ban for certain categories of travellers from 1 November 2021, subject to certain conditions. On 7 February 2022, the Prime Minister announced that Australian international borders would re-open from 21 February 2022.

3.9 With the imposition of travel restrictions in March 2020, Qantas suspended scheduled international flights on the route in 2020-2021.

3.10 In assessing the current Qantas application for the renewal of the Determination, the Commission considered whether Qantas has failed to service the route effectively.

3.11 Until travel restrictions linked to the COVID-19 pandemic were imposed by the Australian Government in March 2020, Qantas operated regular services between points in Australia and Canada. Prior to March 2020, there was no information to suggest that Qantas has failed to service the Australia-Canada route effectively.

3.12 The Commission considers that the temporary suspension in 2020-2021 of Qantas' services between Australia and Canada was directly in response to travel restrictions associated with the COVID-19 pandemic. The Commission therefore finds that the temporary suspension of Qantas' services in these circumstances does not mean that Qantas has failed to service the route effectively. Moreover, the Commission notes that since December 2021, Qantas has resumed operating regular services between points in Australia and Canada.

3.13 The Commission has also considered the 'reasonable capability criterion' in section 8 of the Policy Statement, i.e. the extent to which all Australian carriers that are, or would be, permitted to use the capacity allocated under a determination are reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity allocated under the determination.

3.14 The Commission notes that Qantas is an established carrier that currently operates services between Australia and Canada. The Commission therefore finds that the carrier is reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated on the Australia-Canada route.

3.15 There is no other information before the Commission that it considers to be relevant or material to its assessment of Qantas' application. Based on its findings above, the Commission is not satisfied that the allocation of capacity in the original determination is no longer of benefit to the public for the purposes of section 8(2)(a)(i) of the Act. Therefore, the Commission is required to make the same allocation of capacity as the original determination.

3.16 The Commission will continue to monitor the utilisation of capacity by Qantas on this route.

3.17 Under section 19 of the Act, the Commission "must include the same terms and conditions as the original determination to which it relates" (s 19(1)(c)), but "may make such changes (if any) to the terms and conditions included in the original determination (including adding or deleting terms and conditions) as it is satisfied are warranted because of changes in circumstances since the original determination was made" (subsection 19(3)).

3.18 As part of its application, Qantas requested that the allocation of capacity is varied from 1,092 seats to 708 seats and to remove the condition that permits the capacity to be used by Jetstar. Qantas also requested to retain all other existing conditions, including permission for the carrier to offer code share services on the route with American Airlines, WestJet Airlines and Alaska Airlines. The Commission has decided to issue this determination subject to the conditions set out in item 4 below.

3.19 Nothing in this decision should be taken as indicating either approval or disapproval by the Australian Competition and Consumer Commission (the ACCC). This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

## **4 Renewal Determination allocating capacity on the Canada route to Qantas Airways Limited ([2023] IASC 133)**

4.1 In accordance with section 8 of the Act, the Commission makes a determination in favour of Qantas Airways Limited, allocating 708 seats of passenger capacity per week in each direction, in accordance with the Australia – Canada air services arrangements.

4.2 The determination is valid for 5 years from 25 September 2024.

4.3 The determination is subject to the following conditions:

- (a) Qantas Airways Limited is required to fully utilise the capacity from the date the determination comes into effect or from such other date as approved by the Commission.
- (b) Only Qantas Airways Limited is permitted to utilise the capacity.
- (c) Qantas Airways Limited is not permitted to utilise the capacity to provide code share or joint services with another Australian carrier or any other carrier unless approved by the Commission.
- (d) Subject to the preceding condition, the capacity may be used by Qantas Airways Pty Limited to provide code share services with:
  - i. American Airlines, in accordance with the code share agreement between the airlines dated on or around 31 December 2016, as amended.
  - ii. Alaska Airlines, in accordance with the code share agreement between the airlines dated 24 December 2005, as amended; and
  - iii. WestJet Airlines, in accordance with the code share agreement between the airlines which came into effect on 4 September 2014, as amended.
- (e) Qantas Airways Limited must apply to the Commission for approval of the use of the capacity if there are variations to the code share arrangements which would change the relevant commercial aspects of the code share arrangement(s) from a free sale code share arrangement to a blocked space, or vice versa, or if Qantas Airways Limited proposes to add third country routes on which the airlines will code share where Australian capacity will be used for services on that route.
- (f) 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 of the carrier actually operating the flight at the time of the booking. Nothing in this determination exempts the airlines from complying with Australian Consumer Law.
- (g) Changes in relation to the ownership and control of Qantas Airways Limited 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 Airways Limited or be in a position to exercise effective control of Qantas Airways Limited without the prior consent of the Commission.

Dated: 6 December 2023



Genevieve Butler  
Chairperson



Jane McKeon  
Commissioner