



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2024] IASC 112
Renewal of:	[2019] IASC 108
The Route:	Papua New Guinea
The Applicant:	Qantas Airways Limited (Qantas) (Qantas) (ABN 16 009 661 901)
Public Register File:	IASC/APP/202418

The Commission makes a fresh determination allocating to Qantas Airways Limited (Qantas) 566 seats of passenger capacity per week on the Papua New Guinea route. The capacity may be utilised by Qantas or Jetstar Airways Pty Limited, subject to certain conditions. The determination is valid for five years from 24 March 2025.

1 The application for renewal

1.1 On 1 May 2019, the International Air Services Commission (the Commission) issued renewal Determination [2019] IASC 108 (the Determination) allocating 888 seats of capacity per week in each direction on the Papua New Guinea route in favour of Qantas. The Determination was subsequently varied by Decision [2023] IASC 215¹ to reduce the capacity allocation by 322 seats, leaving 566 seats of capacity allocated under the Determination.

1.2 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 23 March 2025. In view of this, the Commission sent, on 25 March 2024, a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination.

1.3 On 7 May 2024, Qantas applied to the Commission for a renewal of the Determination for a further five-year period from 24 March 2025, and requested the retention of all existing conditions.

1.4 As required by sections 12 and 17 of the Act, the Commission published, on 8 May 2024 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.

1.5 All non-confidential material supplied by the applicant is available on the

¹ [Decision \[2023\] IASC 215](#)

Commission's website (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-Papua New Guinea air services arrangements, Australian designated airlines may operate up to 3,520 seats of passenger capacity per week in each direction between Papua New Guinea and Australia. According to the Register of Available Capacity, there remain 1,954 seats of passenger capacity available for allocation to Australian designated airlines.

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 section 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 section 14(2) of the Policy Statement.

3.6 However, section 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 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, the Qantas Group suspended the scheduled international flights of both Qantas and Jetstar in 2020-2021. In assessing the current Qantas application for the renewal of its capacity allocation under the Determination, the Commission considered whether Qantas has failed to service the route effectively.

3.10 The Commission considers that the temporary suspension of the Qantas services between Australia and Papua New Guinea in 2020-2021 was in response to the COVID-19 travel restrictions. Prior to March 2020, there was no information to suggest that Qantas had failed to service the Australia-Papua New Guinea route effectively.

3.11 In light of this, the Commission finds that the temporary suspension of the Qantas Group’s services in these circumstances does not mean that it has failed to service the route effectively. Moreover, the Commission notes that Qantas resumed services between points in Australia and Papua New Guinea in April 2022.

3.12 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.

3.13 The Commission notes that Qantas and its wholly-owned subsidiary, Jetstar, are established international carriers and, as such, are reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated on the Australia-Papua

New Guinea route.

3.14 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 (see section 8(2)(a) of the Act).

3.15 Qantas also requested to retain all existing conditions. 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)). The Commission has decided to continue permitting the use of the capacity for code sharing with the airlines listed in item 4 below subject to conditions as stated.

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

4 Determination allocating capacity on the Papua New Guinea route to Qantas Airways Limited ([2024] IASC 112)

4.1 In accordance with section 8 of the Act, the Commission makes a Determination in favour of Qantas Airways Limited, allocating 566 seats of capacity per week to operate passenger services on the Papua New Guinea route in accordance with the Australia - Papua New Guinea air services arrangements.

4.2 The Determination is valid for five years from 24 March 2025.


4.3 The Determination is subject to the following conditions:


- (a) Qantas is required to fully utilise the capacity from the date the Determination comes into effect or from such other date approved by the Commission.
- (b) The capacity may be utilised by:
 - Qantas Airways Limited; or
 - Jetstar Airways Pty Ltd, as long as it remains a wholly-owned subsidiary of the Qantas Group; or
 - such other wholly-owned subsidiary of the Qantas Group that the Commission approves in writing, as long as it remains a wholly-owned subsidiary of the Qantas Group.
- (c) Neither Qantas Airways Limited nor another Australian carrier which is a

wholly-owned subsidiary of the Qantas Group is permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person unless approved by the Commission.

- (d) Subject to the preceding condition, the capacity may be used by Qantas Airways Limited 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 Airways Limited.
- (e) To the extent that the capacity is used to provide 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.
- (f) Changes in relation to the ownership and control of Qantas Airways Limited and/or its wholly-owned subsidiary authorised to utilise 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 — Papua New Guinea 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 and/or its wholly-owned subsidiary or be in a position to exercise effective control of the airlines, without the prior consent of the Commission.

Dated: 4 June 2024


Genevieve Butler
Chairperson


Jane McKeon
Commissioner