



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2013] IASC 104
Renewal of: [2007] IASC 108
The Route: Japan
The Applicant: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/201216

The Commission's delegate makes a fresh determination allocating 6.1 B767-200 equivalent units of capacity per week on the Japan route for five years.

1 The application for renewal

1.1 On 11 October 2007, the delegate of the Commission issued Determination [2007] IASC 108 (the Determination), allocating 6.1 B767-200 equivalent units of capacity per week in each direction on the Japan route. The Determination permits Qantas and a wholly-owned subsidiary of Qantas to utilise the capacity. It also permits the capacity to be used by Qantas in joint services with a wholly-owned subsidiary of Qantas. Subsequently, the Determination was varied by Decision [2010] IASC 213 to allow the capacity to be used by Qantas to provide services jointly with Japan Airlines.

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 2 April 2013. In view of this, the Commission sent, on 12 August 2012, 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 3 September 2012 for a renewal of the Determination including the permission for another Australian carrier which is a wholly-owned subsidiary of Qantas to utilise the capacity and the capacity to be used by Qantas in joint services with its wholly-owned subsidiary. Qantas advised, on 27 February 2013, that the code sharing with Japan Airlines on the route is no longer required.

1.4 The Commission published a notice on 4 September 2012, in accordance with sections 12 and 17 of the Act, inviting other applications. No other applications were received.

1.5 All material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

2 Provisions of relevant air services arrangements

2.1 Under the Australia-Japan air services arrangements, there are unlimited frequencies

and slots for both passenger and/ or all-cargo services between any points in Australia and any points in Japan with the exception of the following:

- 22.7 units per week to and from Narita Airport; and
- up to seven frequencies per week using two slots per day to and from Haneda Airport.

3 Delegate's consideration

3.1 In accordance with section 27AB of the Act and regulation 3A of the International Air Services Commission Regulations 1992, the delegate of the Commission may consider the Qantas application. (For purposes of this determination, references to the Commission include the delegate of the Commission).

3.2 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.

3.3 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) of 19 May 2004 (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 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 seeking capacity on the route; and
- Qantas and its wholly-owned subsidiary, Jetstar Airways, are established international carriers and are therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their applications.

3.5 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal.

3.6 In view of the above, the Commission concludes that the renewal of Determination [2007] IASC 108 would be of benefit to the public.

3.7 Further, as part of the renewal, Qantas has requested the continued permission for the capacity to be used by any wholly-owned subsidiary of Qantas and for Qantas to be able to use the capacity in joint services with its wholly-owned subsidiary.

3.8 Subsection 15(1) of the Act allows a determination to include such terms and conditions as the Commission thinks fit. Subsection 15(2) provides, in part, that the determination may include a condition that, to the extent that any of the capacity is allocated to a particular Australian carrier, it may be used in whole or in part by any one or more of the following: (i)

the carrier; (ii) a wholly-owned subsidiary of the carrier; (iii) if that carrier is a wholly-owned subsidiary of another Australian carrier—that other carrier.

3.9 The Commission notes that it has previously allocated capacity to Qantas to be used by its wholly-owned subsidiary in the interests of providing commercial and operational flexibility, consistent with the Act. The Commission considers that including this condition is consistent with the object of the Act and the Policy Statement, both of which make it clear that the Commission should have regard to the need for Australian airlines to be able to compete effectively with one another and with foreign airlines.

3.10 In the interests of providing commercial and operational flexibility, consistent with requirements of the Act, the Commission will authorise the use of the capacity by a wholly-owned subsidiary of Qantas.

3.11 In relation to Qantas' request to provide joint services on the route with its wholly-owned subsidiary, paragraph 3.6 of the Policy Statement provides that where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise applications for use of capacity to code share. However, if the Commission has serious concerns that a code share application (or other joint service proposal) may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission (the ACCC).

3.12 The Commission does not have serious concerns that the continued use of the capacity on the Japan route in joint services with its wholly-owned subsidiary may not be of benefit to the public. In this regard, it did not consult the ACCC on the matter and does not propose to subject the application to more detailed assessment under paragraph 5 of the Policy Statement.

3.13 Consistent with paragraph 3.7 of the Policy Statement, in relation to joint services, the Commission will include a condition requiring Qantas to take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier that is actually operating the flight.

4 Determination for renewal of Determination [2007] IASC 108 allocating capacity on the Japan route to Qantas ([2013] IASC 104)

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating 6.1 B767-200 equivalent units of capacity per week in each direction between Australia and Japan under the Australia - Japan air services arrangements.

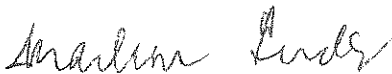
4.2 The determination is for five years from 9 August 2013.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity;
- only Qantas or another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity;

- 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 without the approval of the Commission;
- the capacity may be used by Qantas to provide services jointly with any wholly-owned subsidiary of Qantas;
- where the capacity is used to provide joint services on the route, nothing in this determination exempts Qantas and any wholly owned subsidiary from complying with the Australian Consumer Law. The airlines are required to take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight; and
- changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia - Japan 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 be in a position to exercise effective control of Qantas, without the prior consent of the Commission.

Dated: 8 March 2013



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners