



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2019] IASC 108
Renewal of:	[2014] IASC 105
The Route:	Papua New Guinea
The Applicant:	Qantas Airways Limited (ABN 16 009 661 901) (Qantas)
Public Register:	IASC/APP/201909

The Commission makes a fresh determination allocating to Qantas 888 seats of capacity per week on the Papua New Guinea route. The determination is valid for five years from 24 March 2020.

1 The application for renewal

1.1 Section 17 of the *International Air Services Commission Act 1992* (the Act) requires the International Air Services Commission (the Commission) to start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. Determination [2014] IASC 105 (the Determination) is due to expire on 23 March 2020. In view of this, the Commission sent, on 13 March 2019, a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination.

1.2 On 4 April 2019, the Commission received an application from Qantas seeking to renew the Determination allocating, in favour of Qantas, 888 seats per week of capacity on the Papua New Guinea (PNG) route for a further five-year period from 24 March 2020. Qantas also sought to retain existing conditions contained in the determination.

1.3 As required by sections 12 and 17 of the Act, the Commission published a notice on its website inviting other applications for the capacity. No other applications were received.

1.4 All non-confidential material supplied by Qantas 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 – PNG air services arrangements allow multiple designation of Australian airlines to operate on the PNG route. The Register of Available Capacity indicates there are 400 seats of capacity available for immediate allocation on this route to Australian designated carriers.

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 Under section 11 of the Act, the Minister made the *International Air Services Commission Policy Statement 2018* (the Policy Statement) which came into effect on 28 March 2018. The Policy Statement sets out the criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.3 Section 14 of the Policy Statement provides that there is a presumption of making the same allocation of capacity in favour of the carrier seeking a renewal. However, the Commission may consider that an allocation of capacity is no longer of benefit to the public 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 having regard to the reasonable capability criterion (in section 8 of the Policy Statement) and any of the additional criteria (set out in section 9 of the Policy Statement) is satisfied that a different allocation of the capacity would be of greater benefit to the public.

3.4 Under the 'reasonable capability criterion' in section 8 of the Policy Statement, in assessing the public benefit of an application, the Commission is to have regard to 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.

3.5 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 Qantas has also requested the inclusion of all existing conditions, including: (i) permitting its wholly-owned subsidiary, Jetstar Airways Pty Limited (Jetstar), to utilise the capacity in addition to Qantas; and (ii) permitting the capacity to be used by Qantas 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.

3.7 The Commission notes that Qantas and Jetstar are established carriers operating scheduled international air services to various destinations. In the Northern Winter 2018-19 Scheduling Period¹, Qantas currently operated between 2 to 8 weekly services between Brisbane and Port Moresby. The Commission therefore finds that Qantas and Jetstar are reasonably capable of obtaining the necessary regulatory approvals required to operate and service the Australia-PNG route and of using the capacity allocated on the route. In light of this, the Commission is satisfied that renewing the capacity allocation for the use of Qantas and/ or Jetstar would be of benefit to the public.

3.8 The Commission further considers that there are no competition issues concerning Qantas' request to permit the capacity for the provision of joint services between Qantas and any wholly-owned subsidiary of the Qantas Group. In this regard, the Commission has decided to include a condition permitting the capacity to be used by Qantas 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.

3.9 As required by section 23 of the Policy Statement, where the Commission authorises a carrier to utilise the allocated capacity to provide joint or code share services with another carrier, the Commission will include a condition requiring the airlines concerned to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flight.

3.10 Subsection 15(1) of the Act allows a determination to 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 legislative requirements and current air services arrangements.

3.11 Nothing in this decision should be taken as indicating either approval or disapproval by the ACCC. This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

¹ Northern Winter 2018-19 International Airlines Timetable Summary (28 October 2018-30 March 2019)

4 Determination for renewal of [2014] IASC 105 allocating capacity on the Papua New Guinea route to Qantas ([2019] IASC 105)

4.1 The Commission allocates to Qantas, pursuant to section 8 of the Act, 888 seats per week of capacity on the PNG route in accordance with the terms of the Australia – PNG air services arrangements.

4.2 The determination is valid for five years from 24 March 2020.

4.3 The determination is subject to the following conditions:

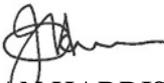
- (a) Qantas is required to fully utilise the capacity from no later than 25 June 2020 or such other date approved by the Commission;
- (b) The capacity may be utilised by:
 - Qantas; or
 - Jetstar Airways Pty Limited, as long as it remains a wholly-owned subsidiary of Qantas or
 - such other wholly-owned subsidiary of Qantas that the Commission approves in writing, as long as it remains a wholly-owned subsidiary of Qantas.
- (c) 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.
- (d) Subject to the preceding condition, the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary of the Qantas Group and by any wholly-owned subsidiary of the Qantas to provide joint services with Qantas.
- (e) To the extent that the capacity is used to provide joint services on the PNG route, Qantas and any wholly-owned subsidiary permitted to use the capacity 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.
- (f) Changes in relation to the ownership and control of Qantas and/ or wholly-owned subsidiary permitted 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 – 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 the airline or be in a position to exercise effective control of the airline, without the prior consent of the Commission.

Dated: 01 May 2019



IAN DOUGLAS
Chairperson



JAN HARRIS
Commissioner



KAREN GOSLING
Commissioner